PROCEEDINGS

OF THE

Wm W. Patton

SESSION

OF

BROADWAY TABERNACLE,

AGAINST

LEWIS TAPPAN,

WITH THE ACTION OF THE

PRESBYTERY AND GENERAL ASSEMBLY.

NEW YORK:

FOR SALE AT NO. 143 NASSAU STREET.

1839.

CASE

BETWEEN THE

SESSION OF BROADWAY TABERNACLE,

(NEW YORK CITY,)

AND

LEWIS TAPPAN.

After the decision of the General Assembly, sustaining my appeal, it was not my intention to make any publication of the proceedings in the ecclesiastical courts, until the case should have been finally decided, being desirous of obeying the injunction, to the letter, of co-operating with the Session in "preventing further proceedings, and pacificating all concerned;" although the publication of the proceedings in the General Assembly, including the opinions of the members of that court, in the newspapers, which give but an *ex parte* view of the subject, seemed to require of me such a statement as would place before the christian community all the material facts in the case. The reading of the indictment, the testimony on behalf of the prosecution, and the statement of the Session respecting their view of the alleged contumacy of the appellant, were read at length in the General Assembly, although the merits of the case were not, in fact, properly before that court,—and the appellant had not the opportunity of offering testimony to rebut the accusations thus incidentally brought against him. And the speeches of the respondents, in which allusion is made to what transpired on the trial now pending, having been subsequently published, the community, as well as the members of the General Assembly, must necessarily have but a partial, and consequently a prejudicial, view of the case, while the appellant keeps back such facts as are material to a right understanding of the extraordinary, but unsuccessful attempt that has been made, under the forms of ecclesiastical law, to drive him from the Presbyterian Church. Still, the appellant would have refrained from publishing all the facts in the case, until an ultimate decision, had the other party been disposed to act in the premises on reasonable principles. On returning from Philadelphia, I addressed a note to the Session, of which the following is a copy:

No. 80 *White Street*, 31*st May*, 1839.

Mr. W. D. Coit, *Clerk of Session of Broadway Tabernacle Church.*

Dear Brother,—

By the minute of the General Assembly, the Session and myself are required solemnly and prayerfully to confer together, with the purpose of preventing further proceedings, &c. I feel a sincere desire to fulfil, so far as in me lies, the wishes of the General Assembly, and shall be happy to take any action in the premises, with the Session, that may be practicable and desirable.

As charges of an aggravated nature have been tabled against me, and considerable publicity given to them, I do not at present see any better way than for the Session to withdraw them, or give me an opportunity to show my innocence by finishing the trial.

Should the Session prefer, however, to unite with me in a statement of facts, to be published in the Observer and Evangelist, signed by both parties, or consent to separate statements, I shall be ready to agree to this mode of ending the difficulties.

I should be glad to publish the accusations brought against Mr. Parker, at the meeting of the church on the 24th Sept. 1838, together with the proof in my possession to establish them, and such explanations as Mr. P. may choose. Also a statement of what took place in the study of the Tabernacle, prior to the infliction of the sentence for contumacy.

The sole object I should have in publishing, would be to lay before the Christian community the facts in the case; and it would be my earnest desire to have both parties unite in a statement, in the most friendly and amicable manner.

If any better way can be suggested, it will meet with prompt and cordial acceptance by, dear sir, your friend and brother,

Lewis Tappan.

P. S. I would submit to the Session the propriety of having the minute of the General Assembly read from the pulpit next Sabbath.

In reply, the Session informed me, under date of June 5th, that they would see me at any of their stated meetings. Accordingly, on Tuesday,

June 11th, I had an interview with the Session, and after uniting with the moderator, Rev. Joel Parker, in prayer, we conversed freely and at length respecting the matters in controversy. Various propositions were suggested, but the parties came to no final result. On the 13th, I addressed a note to the Session, of which the following is a copy:

New York, June 13, 1839.

To the Session of the Broadway Tabernacle Church.

Dear Brethren,—

I have considered the suggestion made at our interview on the 11th, of leaving the matter between us to Referees, and think it will not be judicious for either party, for reasons before stated, and many others. Being very desirous of having a *speedy decision* on the part of the Session as to what they will do, I shall be greatly obliged if you will take up my letter of last month, and determine which of the modes therein suggested will be most agreeable to the Session. After meeting with you, and prayerfully considering the subject, agreeably to the wise and Christian recommendation of the General Assembly, I do not think it probable you will consent to any other terms than one of those suggested in my note; and the sooner I know the one you choose, the more agreeable it will be to me. I remain, very respectfully, your obedient servant, Lewis Tappan.

The next day I received a reply, as follows:

New York, June 14, 1839.

Dear Brother,—

The Session, at their meeting on 11th inst., resolved to refer the matters at issue between you and themselves to the Presbytery, at their next regular meeting, agreeably to the requisition of the General Assembly.

Very truly, your friend, W. D. Corr,
Stated Clerk B. T. Church Session.

To Lewis Tappan, Esq.

On asking Mr. Coit when the next stated meeting of the Presbytery would take place, he answered, "I believe next October." This brought me to a determination to publish all the facts and proceedings without further delay.

The origin of the difficulties at the Broadway Tabernacle, was an attempt, on the part of a self-constituted committee, composed of some of the elders and members of the church, to induce the Rev. Messrs. George Duffield, and Jacob Helffenstein, who had been elected co-pastors, to resign. The church of the Tabernacle was a Congregational one; and after the resignation of Rev. C. G. Finney, Mr Duffield, then residing in Philadelphia, was invited to fill the pastoral office. He preached very acceptably several months. Early in the year 1838, a conference took place between leading individuals of the Dey Street Presbyterian Church (formerly the First Free Church, Rev. Joel Parker, pastor,) and the Congregational Church at the Tabernacle, (Rev. George Duffield, pastor elect,) with a view to sell the Dey Street church, and unite both churches at the Tabernacle. Pecuniary difficulties, in both congregations, made it desirable to effect a union, and thus lessen the expenses of public worship. The result was, the two churches were united at the Tabernacle in the spring of 1838, under the ministry of Messrs. Duffield and Helffenstein; and it was agreed that they should be connected with the Third Presbytery of New York, with such principles of the Congregational order to be engrafted as should be approved by the united churches.

In the course of the following summer, Mr. Helffenstein having contemplated taking charge of a congregation in Pennsylvania, the self-constituted committee, above alluded to, conceiving that it might promote the interests of the united churches to have Mr. Duffield retire also, took measures to induce both of the pastors elect to resign. Mr. Duffield, being thus urged to retire, determined on making a qualified resignation: considering that although he had not been installed over this congregation, a moral relation existed, which could not be set aside by either party without the consent of the other; and while, therefore, he refused to take the responsibility of saying he would leave at the suggestion of the self-constituted committee, without submitting the matter to the church, he expressed an entire willingness to resign, if it should be the desire of the church. It was their right to be consulted, and Mr. Duffield felt himself bound in conscience unto God and man, to tell them the whole case, and the causes which induced him to tender his resignation. It was for the church, he thought, to say whether those reasons were good and approved by them, and whether they would consent to part with their minister. Should they do so, Mr. Duffield felt that God had made known the path of duty to him, and he should not be left alone to bear the responsibility of sundering a compact before it had been ecclesiastically consummated.

Two meetings of the church were held, at which Lewis Tappan was called to officiate as chairman. Letters from both of the pastors elect were laid before the last meeting, in which Mr. Helffenstein absolutely, and Mr. Duffield qualifiedly, resigned; and it was voted by the church to accept their resignations. The chairman did all he could to arrest the precipitate measure of accepting the resignation of Mr. Duffield, which he had submitted in order to take the sense of the church, and without having any reason to believe that it was the wish of any considerable portion of the church that he should leave,—conceiving that Mr. Duffield had been unreasonably crowded into a qualified resignation by certain members of the church, including part of the Session, who had officiously, as a self-constituted committee, had interviews with the officiating ministers, to induce them both to resign simultaneously, without taking the sense of the church as to their views in the case, in order to prepare the way, as was conjectured, for the introduction of another minister, who was absent from his people, and on a visit to this vicinity. His opposition to these individuals, and the warm interest he took on behalf of Mr. Duffield, offended those who had thus improperly, as he thought, interfered to induce the resignation of that beloved minister, and was, as he has sufficient rea-

son to believe, the origin of that hostility that resulted in an attempt to drive him from the church.

The way having been prepared for the election of a new minister, a meeting of the Tabernacle church was held, September, 1838, to consider the subject of choosing a pastor. When the members had assembled, it was seen, to the surprise of many, that the session had invited a member of the Presbytery, (Rev. Absalom Peters,) to act as moderator, according to Presbyterian usage, with a view to elect a pastor at this meeting of the church. In a matter of so much importance, it was thought that the church would be called together to confer among themselves, with due time for consideration and prayer, after the candidate or candidates should have been named, instead of being hurried to make choice of a minister the first evening the church was convened to consider the subject. The ruling elders, however, had arranged matters to have their favorite candidate nominated and elected at this meeting. Accordingly, the Rev. Joel Parker, pastor of the Presbyterian church at New Orleans, being then in the city or vicinity, was nominated by James C. Bliss, M. D., one of the elders, who, in a speech of upwards of an hour in length, enlarged upon the history, character, services, and fitness of Mr. Parker to fill the office. In the course of his remarks, he said, it was understood that opposition to the nomination would be made by a gentleman present, (pointedly alluding to Lewis Tappan,) and he proceeded to reply to the objections that he presumed would be brought forward by him. Not a few of these imaginary objections were quite frivolous, and such as no one, it is believed, ever thought of adducing. When Doctor Bliss had concluded, the individual thus alluded to rose in reply, and stated that he felt called upon to address the church, as well to disabuse the minds of the members from supposing he had contemplated urging the frivolous objections that had been suggested and replied to, as to offer a few substantial reasons that existed against the choice of Mr. Parker for minister of this church. After speaking a few moments, and the hour being very late, the meeting was adjourned to Sept. 24th, when the church reassembled, Dr. Peters acting as moderator, and the person occupying the floor at the adjournment was allowed to proceed with his remarks.

As the copious BRIEF used on the occasion has been preserved, the remarks made in opposition to the nomination of Mr. Parker can be stated with much accuracy. He observed, that in the choice of a minister, great deliberation was necessary, and referred to the direction of the apostle, *Lay hands suddenly on no man.* He stated, that it was a painful duty to oppose the nomination of an old friend, and his former pastor, especially as no personal discordance had taken place between them, and nothing but a solemn duty he owed to the church, of which he was a member, and to its Great Head, could have induced him to come out in opposition. He asked a patient, candid, and prayerful hearing, and he assured the church, that, if a majority should, after listening to the objections to be offered, vote to give the call to Mr. Parker, and it should be accepted, he should not organize any opposition to him. On the contrary, he would cheerfully submit to the decision of a majority of the church, and co-operate with the pastor and his flock so far as he conscientiously could. He stated that he had enlisted no one in opposition to Mr. Parker, and was desirous that every member of the church should act, in view of what might be adduced, with the impartiality of a juror, feeling his accountability to God. But, before enumerating the objections, he would just allude to a rebuke that had been given to him, on a previous evening, by Dr. Bliss, because he had not called on Mr. Parker, and laboured with him privately, agreeably to the rule in the 18th chapter of Matthew, before bringing forward accusations against him in the hearing of the church. He said, he would remind Dr. Bliss, that the charges were not of a private, but a public nature, and therefore it was proper to allude to them at a meeting of the church, called to act on the nomination of a person to fill the pastoral office, without having previously sought a private interview. He also spoke of the inconsistency of Dr. Bliss, in thus rebuking him, when he himself had censured, in no measured terms, the speaker, for what he had said, and for what it was conjectured he would say, without having previously adopted the gospel rule he had recommended for the observance of another person—and he could not refrain from saying to the doctor, *Physician, heal thyself.*

The first objection Mr. T. adduced was this: *Mr. Parker had acted very inconsistently with reference to the Lord's day.* When pastor of a church in this city, his session had required two members of the church to make a public confession of desecrating the Sabbath, after arriving here in the steamboat from Albany; and yet Mr. P. himself had unnecessarily left Louisville, Ky., in a steamboat, on Sunday. Mr. T. here related the facts, as he had taken them from the lips of an elder of Mr. P.'s church in New Orleans, stating, that on committing the statement to paper, he had read it to the elder, who, after suggesting a few verbal alterations, had pronounced it correct. Mr. T. related the anecdote of JEREMIAH EVARTS leaving the steamboat and stopping on the banks of the Mississippi to spend the Lord's day, and the blessing that followed the act; and remarked, that if Mr. P. had remained at Lonisville, from conscientious reasons, and at an apparent sacrifice, he would have preached a silent discourse, that would never have been forgotten. He mentioned, that the Rev. ASA MAHAN, on meeting Mr. P. as he landed at Cincinnati, from the steamboat from Louisville, had remonstrated with him; that consistency required that Mr. P. should now make a similar confession to that he once required two members of his church to make; and that until he did, it seemed clear that he preached what he declined acting out in his own life. Mr. T. replied to the excuses made by Mr. P.'s elder for his pastor, expressing a belief that they were wholly insufficient, and that it was apparent that Mr. P.'s conduct in the premises was at great variance with what he required of others before he went to New Orleans.*

* On conversing with Mr. P. last fall on this subject, he acknowledged that it would have been better not to have left Louisville as he did, although he has not repented of it,

2. Mr. T. stated that his second objection to the nomination was that *Mr. P.'s conduct and preaching at New Orleans were different from what they were before he went to that city.* Mr. T. referred to a sermon preached by Mr. P. at the Hall in Thames street, New York, Sept. 12th, 1831, the doctrine of which was, "those who are lukewarm in religion are peculiarly odious to Christ," and read extracts from Mr. P.'s farewell sermon from Ezekiel xxi, 27—"I will overturn, overturn, overturn it; and it shall be no more, until he come whose right it is; and I will give it him." He then contrasted such preaching with the sentiments ascribed to Mr. P. in the "Memoir of Lovejoy," where it is said that Mr. P. declared, in a speech delivered at Alton, Ill., at a Colonization meeting, a little time before the martyrdom of Rev. ELIJAH P. LOVEJOY, that it was "an unchristian thing to go into a community to excite that community, and that he should consider it his duty to refrain from speaking on any subject calculated to disturb and agitate a people,"—*Memoir, page* 267. Mr. T. asked how such a sentiment accorded with Mr. P.'s farewell sermon, and the tumult that Dr. Bliss stated Mr. P. had faced at New Orleans? He asked if the allusion to Mr. Lovejoy was not apparent, and if that address could have tended to allay the excitement at Alton, as had been stated by Dr. Bliss. He asked if the principle contained in the extract was sound, and if it showed that Mr. P. deserved, on account of his moral courage at New Orleans, as Dr. Bliss had stated, to be compared with Martin Luther, or the Smithfield martyrs. He then read the following passage from Rev. EDWARD BEECHER'S *Narrative of the Riots at Alton, in connection with the death of Rev. Elijah P. Lovejoy.* "A meeting of the Colonization Society was held in the evening. The leading speakers were Rev. J. Hogan, Rev. J. M. Peck, Rev. Joel Parker, and one whose name I cannot recall. A favorable opportunity was now presented to inculcate upon the audience the importance of sustaining the laws. Perhaps it may be thought that this is foreign from the object of the Society. If so, it would seem to be equally foreign from its object to attack the opinions of the abolitionists; especially as at this time public feeling against them was sufficiently high. Still, in two instances, their opinions were pointedly attacked; and one speaker took considerable pains to go out of his way to do it." This "speaker" was, said Mr. T., as President Beecher had informed him, the Rev. Joel Parker.

3. Mr. T. stated that his third objection was, *Mr. Parker's inconsistency on the Slavery question.* Mr T. said he was not about to argue the Slavery question at that time—whether the Abolitionists were right or wrong—but he should enter upon this topic merely to show Mr. P.'s inconsistency of character. It was known to several persons, that a few months previous to the formation of the American Anti-Slavery Society, Mr. P. subscribed a Declaration of Sentiments, asserting—1. That Colonization is not an adequate remedy for slavery, and must therefore be abandoned for something that is; and 2, That the scheme of immediate emancipation is such a remedy, and therefore to be adopted and urged. Mr. T. said that some of Mr. P.'s friends have said that this act was done hastily, &c., but *he* has not said so, nor could he, for the declaration itself states that it was done "after mature deliberation," and "constrained by a sense of duty to God and man." This declaration was prefixed to "Lectures on Slavery," by Rev. Amos A. Phelps. He sent it in the form of a printed circular to hundreds of ministers and laymen, in different parts of the country, requesting them to consider the subject, sign the paper, and return it to him, with reference to its being prefixed to his book.

The following is an exact copy of the Declaration alluded to:

DECLARATION OF SENTIMENT.*
Bearing date September, 1833.

The undersigned, after mature deliberation, feel themelves constrained by a sense of duty to God and man, to make the following expression of opinion. We believe

1. That Slavery in our land is a great and threatening evil.

2. That it is a great and crying national sin.

3. That every man, whether he live at the North, South, East or West, is personally responsible, and has personal duties to discharge in respect to it.

4. That every man, who adopts opinions or pursues practices, which adopted and pursued by

as a breach of God's law; that one reason of his leaving that place on the Sabbath was, it would have required more labor to remove from the steamboat to the hotel, than to proceed up the river; and he denied that Mr. Mahan did remonstrate with him, &c. Mr. M., however, has stated recently, that he has a distinct recollection that he did remonstrate with Mr. P., on his arrival at Cincinnati, for what he considered a desecration of the Sabbath.

* Mr. Parker informed me, last November, that he did not read the Declaration of Sentiments, in Mr. Phelps' book before his name was published as a signer of it, but that he met Mr. Phelps in the street, and on being requested to give his name, said that he had not identified himself with the Anti-Slavery Society, did not know as he should, and did not wish to commit himself on the subject; that on Mr. Phelps assuring him that his work was merely a discussion of the subject of slavery, he replied, "*you may have my name to that.*" Mr. Parker said he informed me of the above some years ago, that I wrote to him that his explanation was perfectly satisfactory, &c.; and yet that I had slandered him, by accusing him, before the church, of inconsistency in signing the paper understandingly, and afterwards refraining from preaching against slavery at the south. Mr. Phelps has sent to me the original paper, signed by Mr. Parker, with his own hand, and says that he has never yet *seen* him, but he sent the circular to some one in New York city, he forgets whom, who obtained the signatures of several clergymen, Mr. Parker's among others, and returned the paper to him. Rev. C. W. Denison, late of Delaware, informs me that he obtained most, if not all the names on the paper; that Mr. Parker's name was signed, he thinks, in the Anti-Slavery office, then kept at 130 Nassau street, up stairs; that he recollects distinctly, that the impression was made on all present, that Mr. P. had joined the anti slavery ranks; and that this impression was deepened by a conversation between Mr. Denison and another gentleman, in which both talked of him as an abolitionist, and queried what his probable course would be in such a place as New Orleans. The declaration was a short printed circular, and must have been read by every person that signed it. On Mr. Parker's assuring me that he authorized his name to be affixed to it without a knowledge of its meaning, I wrote to him, as he says—for I lost my correspondence with him in the great fire of Dec. 16, 1835, and Mr. Parker has since declined furnishing me with copies of my letters to him—assuring him that I believed as he said, &c. As, however, subsequent information evinced that he must have read and considered the paper to which he signed his name, the charge of falsifying my word is groundless.

all others, would go to perpetuate this sin, does thereby become personally guilty in respect to it.

5. We believe that slavery, like other sins, ought to be remedied as soon as the nature of the case admits; and further, that the nature of the case admits the *possibility*, and therefore imposes the obligation of Immediate Emancipation.

6. That such emancipation is both the duty and the interest of the master.

7. That although the people of the non-slaveholding States have not the right of physical or legal interposition in the case, they have the right, and that it is their solemn duty to do what they can by 'light and love,' to enlighten the public mind, arouse the public conscience, and change and elevate the tone of public sentiment on the subject, in every section of the land.

And *finally*, we believe that the grand obstacle, to the abolition of this sin, lies in the *will* of the slaveholder—that this will being changed, there would of necessity be a change in the various laws and other obstacles which have grown out of it; and that this will is to be changed, by the power of public sentiment among non-slaveholders, and by means of kind, candid, and thorough discussion with slaveholders themselves.

In respect to the scheme of Colonization, which, at the North, professes to be a scheme of gradual and ultimate, though '*incidental*' emancipation, we feel constrained to say—

1. That whatever its merits are, it can never be an adequate remedy for slavery; and

2. That whatever of good it may have done, the time has now come when the friends of God and man ought to take a higher stand, and adopt and act on priciples which lay the axe *directly* at the root of the tree.

JOSHUA LEAVITT,
Editor of New York Evangelist.
D. C. LANSING,
Pastor of the Third Free Presbyterian Church.
GEORGE BOURNE,
Pastor of the North Street Dutch Reformed Church.
CHARLES W. DENISON,
Editor of the New York Emancipator.
JOHN MIDDLETON,
Pastor of East Baptist Church.
JOEL PARKER,
Pastor of the Free Presbyterian Church, N. Y.

Mr. Parker's signing this declaration was a deliberate act, as much so, Mr. T. said, as joining a church. He had refrained from publishing this act of Mr. P. as he had given him some assurances that he would not, and he was unwilling to have him subjected to Lynch law at New Orleans. In the Declaration Mr. P. says further, that slavery "is a great and crying national sin." It was his duty then to preach against it; but, said Mr. T. an elder of his church has stated, that while pastor of a church at New Orleans, he has never preached against slavery, or said it was a sin, nor publicly prayed for its removal. Mr. T. alluded to some conversation he had, sometime since, with another elder of Mr. P.'s church in New Orleans, a slaveholder, who had confessed, after being conversed with on the subject, tenderly and pointedly, that slaveholding was sinful; and, I doubt not, said Mr. T. that if Mr. P. had done his duty, and preached the 'anti-slavery doctrines he once professed, he would have reached the consciences of his church members at New Orleans, many of whom are slaveholders. Mr. T. asked if such neglect of duty resembled the conduct of Daniel, or Peter and John, and he read Ezekiel, 3d chap. 17, 18 and 19 verses, and Lev. 19 chap. 17th verse.—"Thou shalt in any wise rebuke thy neighbour, and not suffer sin upon him." Why, said Mr. T., Mr. Clapp, the Socinian minister at New Orleans, has publicly declared, that if he believed slavery to be a sin, he would preach against it at all hazards. Mr. T. then read some extracts from a printed sermon of Mr. C. on this head.

4. The fourth objection urged against the nomination of Mr. Parker was, *his conduct at Alton prior to the murder of the* REV. ELIJAH P. LOVEJOY. Mr. T. remarked, that Dr. Bliss had stated that Mr. P. found Mr. Lovejoy greatly excited, that he declared he would defend his press at the hazard of his life, that we must exasperate the South—that blood must be spilled—that Rev. Edward Beecher's remarks would have been better at Bunker Hill, &c. Dr. B. stated further, that Mr. P. told Mr. L. that he did not manifest the spirit of Christ, and that he, Mr. P. tried to allay the excitement at Alton. Mr. T. said he would examine into the matter, and see whether Mr. Lovejoy manifested any improper excitement. He referred to a letter written by Mr. L. about two months before his death, addressed to the "Friends of the Redeemer at Alton," in which he proposed to submit to them the decision of the case, whether he should continue his paper there or not, and to the solemn and affecting Appeal he made to the meeting held just before his end. In view of these facts, said Mr. T., who will believe that Mr. L. had any unholy excitement, and that he did not manifest the spirit of Christ? No ONE. Mr. T. then referred to Mr. P.'s remark to Mr. L. at Alton, that Paul's example in being let down from the wall at Damascus, in a basket, was a fit example for him, and said that Paul at that time was escaping from the *governor*, and on other occasions he had acted otherwise. Mr. T. here went into an examination of what Mr. P. did at Alton. Dr. Bliss had stated that a lawyer at Alton had said, if they would get up an anti-mob meeting he would attend, and Mr. P. did attend such a meeting, and tried to prevent a mob. Well did Mr. B. say he was not very familiar with the doings at Alton, or he would not have made these assertions. The facts are, that on Tuesday, before the Anti-Slavery Convention, at which the late REV. DR. BLACKBURN presided, *one* who had been an active Colonizationist, asked a lawyer at Alton if he would attend an Anti-Convention meeting, to which request he received the following indignant reply—"If they will get up an Anti-Mob meeting I will attend it." It was in consequence of this significant rebuke, that the opponents of the Convention determined to have a Colonization meeting instead of an Anti-Convention meeting. Rev. Joel Parker attended this meeting and made a speech. Mr. T. here read a passage from the "Memoir of Lovejoy," page 262, and commented upon it. He also read a passage from the Rev. Edward Beecher's pamphlet,

page 28, "that at the meeting many things were said tending to excite prejudice and odium against the friends of immediate emancipation;" and said the author referred to Mr. Parker; and again from page 37, "the Colonization Society had been introduced as the means of breaking up every plan to secure a kind and peaceful discussion of the subject of slavery." Mr. T. also quoted a passage from the "Memoir, &c." page 263, where it is stated that Mr. P. ridiculed the doctrine of immediate emancipation. He also read from the 64 page of Beecher's pamphlet, and said that President B. had told him that, after a conversation with Mr. P. at Alton, when he alluded to the well known custom of Colonization agents stating at the North that that scheme is favorable to the emancipation of the slaves, and at the South that it tends to strengthen slavery, Mr. P. in his speech at the colonization meeting remarked, in allusion to this objection to the society, "Is it not our duty to do all we can to strengthen and preserve the PROPERTY of our neighbors?" Mr. T. inquired how did Mr. P. "allay" the excitement at Alton? He rather added fuel to the flame! How recreant was he to the solemn declaration subscribed before he went to New Orleans. Mr. T. then read an extract from page 37 of Beecher's pamphlet, relating to the duty of a minister in trying exigencies—and alluded to the declarations of Dr. Bliss, that President B. was one cause of the death of Mr. Lovejoy, that he wrought upon him by his eloquence to conduct so badly, and that Mr. B. criminated Mr. P. to remove the odium from himself. Mr. T. said, in view of these remarks, and Dr. Bliss not having called upon President Beecher before publicly making them, as he would have had Mr. T. do before publicly accusing Mr. Parker, he must again say, *Physician, heal thyself.*

Mr. T. said, that, in answer to the question put by Dr. Bliss, shall such a man as Mr. Parker be put aside and shunned in consequence of this inconsistency of conduct? he would say, NO. He would rather treat him with kindness, and if he should repent, forgive and restore him. But, said he, if he should repent, why remove him from New Orleans? Dr. B. had shown his great fitness for that city, and the same reasons that existed for his going to that city seemed to exist now for his continuing there. Mr. T. then went into an inquiry respecting the kind of pastor wanted at the Tabernacle. For the pastor we do *not* want he referred to page 16 of Mr. P.'s Farewell Sermon. It has been said, observed Mr. T., that a pastor is wanted at the Tabernacle who can draw a full house, who can sustain public worship there, who has great moral courage, &c. But little was said about obtaining a minister who can PRAY as well as PREACH, who has Christ with him, and who is full of the Holy Ghost. And yet, such an one only will God our Savior honor in building up His kingdom. He here quoted the text of Mr. P.'s sermon at the installation of Rev. Charles G. Finney, at Chatham Street Chapel, "Except the Lord build the house, they labor in vain that build it." Mr. T. then referred to what had been said of Mr. P.'s courage at New Orleans, and said he would not detract an iota from his reputation for firmness, but he could not but think that if he manifested unusual courage there, he had not exhibited it elsewhere. Mr. T. said he had accounted for Mr. P.'s *seeming* courage at New Orleans differently. He would have lost the confidence of every one if he had not gone into the city after being menaced in consequence of the suspicion that he was an abolitionist, &s.; it was well known that he carried certificates with him that he sympathized with the enemies of the Anti-Slavery Society; and he doubtless said, what he did afterwards at Alton, that he deemed it to be "an unchristian thing to go into a community to excite that community, &c."

Mr. T. said that the free churches can only prosper by holding on to the principles on which they were founded—viz. 1. Non-conformity to the world. 2. Making aggressive movements into the territories of Satan. 3. A willingness to make sacrifices of property, time, and reputation in their support—and 4. Looking to Christ as the Leader. For one he was free to declare that he did not wish to have his children brought up under a minister who was not governed by such principles; who, instead of preaching the law of God in his pulpit with fearlessness, was like a vane on the top of a sanctuary, to indicate which way the wind blew. If, said he, we depart from the principles that have been named, or elect a minister who will preach contrary doctrines, though he have the eloquence of an angel, yet ICHABOD will be written upon these walls—"the glory is departed!"

After the conclusion of these remarks other brethren of the church spake, and, on taking the vote (both men and women voting,) from eighty to a hundred persons voted in the affirmative, twenty-eight in the negative, and nearly as many declined voting. Dr Peters closed the meeting with prayer, and thanks were offered by him for the kind feelings with which the subject had been discussed, the assurances of peace and submission that had been given, and the degree of unanimity that had prevailed At the close of the meeting Dr. Bliss, in the presence of several persons, complained to Mr. T. that he had not called on Mr. Parker since he had been in the city, and received for answer that he, Mr. T., had omitted it because he had not been able to reconcile it with his sense of propriety to call upon one whose conduct at Alton he believed had been one of the chief causes of the murder of Mr. Lovejoy. Dr. Bliss himself, it will be remembered, in the course of his speech in favour of Mr. Parker, had spoken of President Beecher as having been one of the chief causes of the death of Mr. Lovejoy.

Soon after the call had been put into Mr. Parker's hands he commenced preaching at the Tabernacle. I addressed a note to him early in November requesting an interview with him. In reply Mr. P. wrote, "I am gratified to learn that you desire an interview with me. The subject has been introduced in one of our meetings of Session, and when brethren suggested a course of action, I advised delay, as, thinking that a private interview might occur at no distant period. I shall be happy to meet you at the study, &c." On the 16th November we had an interview of upwards of two hours. I read to Mr. P. the substance of my remarks at the meeting of the

church September 24th. He stated that previous to the second Colonization meeting at Alton, he went around to the gentlemen who were to speak and requested them not to speak against the abolitionists; that he said nothing against them in his speech; that he did *not* utter the sentiment ascribed to him in the Memoir of Lovejoy; that what he said about the Irish girl was wholly misrepresented; that he did advise Mr. Lovejoy to leave Alton, not because it was his duty, but on account of expediency; that the abolitionists begged him, Mr. P. to remain at Alton, because they thought his presence there would be serviceable to them; that he did say at the Colonization meeting that the Society made the slaves more quiet, and that it also hastened the time of their deliverance from bondage, as he believes both propositions; that it was in this sense he said it was our duty to make the property of our neighbors more secure; that Mr. Beecher did say his remarks were jesuitical, but he did not know, before they were pointed out by Mr. T. to which remarks Mr. B. particularly alluded. Near the conclusion of this amicable interview the following dialogue took place, which was committed to paper immediately after, and which was read in the Presbytery in the presence of Mr. Parker, without any denial being made to any part of it by him.

J. P. Well, is the matter to rest here?

L. T. I have nothing further. If the Session take any action on the subject I have no objection. I acted conscientiously, well aware of my responsibility—said nothing I did not believe, and that was not supported by what I believed good evidence.

J. P. What if I should publish that your allegations are untrue?

L. T. Why, three quarters of the community will believe you, and one quarter of them me. I have thrown away my reputation—have no more than you had when you were minister of the congregation in Thames-street—but you have become popular now, &c.

J. P. How can we act together in the church with such different views and feelings?

L. T. I see no difficulty. I shall not organize any opposition to you as I might, but endeavour to be kind to you; shall attend all the meetings I can, wish you success in your ministry, and pray and talk in the meetings, whether invited or not, as I used to, on all fit occasions—hold up the subject of slavery perpetually, in the confident belief that the church is in a great error, but that it will eventually agree with me, &c.

J. P. Well, I shall do all I can to limit your influence in the church, because I think it a bad influence.

L. T. I shall try to limit what I see wrong in you, but not obstruct any of your efforts to do good.

In a letter to Mr. P. dated November 20, 1838, I observed,—"I am anxiously desirous of ascertaining the facts respecting the matters introduced by me in the remarks made at the meeting of the church, and shall not fail to do all the justice to you in my power if it turns out that mis-statements were made. As to the Sabbath matter, you admitted every material thing that I stated, and even one in addition, viz. that you did not hasten on for fear the water was falling. With regard to the matters alleged against you at Alton, that, I conceive, is a question between you and Messrs. Lovejoy and President Beecher. Until you publicly deny the truth of what they have printed I do not perceive that you can require me to unsay my repetition of their statements. The matter of your signing Mr. Phelps's Declaration appears to me the chief thing for me to investigate. It would give me sincere and very great pleasure to know that all the charges were unfounded. But, whether so or not, I shall not have an angry controversy with my old friend, nor allow myself to entertain any unkind feelings towards you. That you do not embrace all the Anti-Slavery principles, and adopt the measures of the Society, grieves me much. That you will ultimately see eye to eye with those who are laboring for the immediate emancipation of the slaves, I cannot doubt. I will therefore treat you as a brother who will, one of these days, be united with me heart and hand in this glorious enterprise. Truly and respectfully yours."

On the 27th November I wrote to Mr. Parker as follows:—

Rev. Joel Parker,—I send you a circular containing intelligence from Liberia.

Last Sabbath some one remarked that you considered yourself *crowded* by having notices for the Concert for the Enslaved sent to you after you had refused to read them. So far as I have had, or may have, any agency in such matters, be assured there is no disposition to crowd you on this subject or any other. I wish you to be assured that I will never countenance any one in obstructing your ministry, or treating you with unkindness or disrespect; and you know me too well to suppose, for a moment, that I would do anything of the kind. I am more particular in making this statement because I am satisfied there are "malicious tongues" who spread false reports of what is said and done.

On the Anti-Slavery subject, and on all others, I will be frank and kind, and I beg of you not to imagine that I have the least disposition to make your present situation uncomfortable. As I told you, I shall not cease to hold up the Slavery question on all fit occasions, but I wish to do it in a Christian manner.

The *notices* are regularly sent around, and will be, in the hope that where ministers have declined reading them they will have seen the subject in a different light before the return of another month. Sometimes different individuals circulate the notices, and now and then a duplicate is sent to the same church.

As the notices are not, for the present, read from your pulpit, the committee in charge of this matter will think it their duty to take other means to notify the brethren and sisters of the Tabernacle Church, from time to time, but in no way that can justly be deemed improper.

I almost regret that your brethren in the ministry advised you not to institute charges against me, because in many respects it would subserve the cause of truth to have an investigation. I wish to say here that if it can be shown to me that any thing I said to the church is untrue, it would give me great pleasure frankly to make the

same known. I would not, brother Parker, willingly do you the least injustice. Where I think you are in fault I would frankly say so, and labor for your return to duty. In one of your Thames street sermons you remarked that if a minister declined in piety or holy effort, he would perhaps be the last person to know it unless some member of the church pointed it out to him.

I feel grieved that a man like you, who was so courageous, who made so many aggressive movements into the territories of Satan, whose preaching was so pungent, should have apparently adopted so opposite a course of action. May I not affectionately entreat you, brother P., to think of the past, of Bissell, of our former friendship and united action. Have *I* fallen back, or is it *you?* You once thought that a different course was the way to be really useful. How is it that your views have altered? Abolitionism is not merely the emancipation of the blacks, but, in its comprehensive sense, is opposition to all tyranny in church and state—civil, ecclesiastical, or social.

May the Lord guide you and keep you. So prays your old friend. LEWIS TAPPAN.

On the 29th November, I wrote to Mr. P. as follows:—

BROTHER PARKER,—Unexpectedly to me, brother Mahan came to me this evening. On my mentioning to him that you told me that on your arrival at Cincinnati from Louisville, he did not rebuke you for desecrating the Sabbath, or mention it until a year or more afterwards, he expressed much surprise, and remarked that he did remonstrate with you very plainly, on your arrival at Cincinnati, and you blamed him at Oberlin more recently, because that, after such expostulation, followed by your acknowledgment that you had done wrong, he should have mentioned your breach of the Sabbath to another person.

Both Mr. Mahan and myself suppose that the fact of his having remonstrated with you, soon after the act, had escaped your memory.

I mention the above, dear brother, because I wish to commit to paper, before it is forgotten, the statement just made by brother Mahan, and because I am anxious that the truth and the whole truth should be ascertained and clearly understood by us, relating to the matters alleged against you by, Yours, sincerely,

LEWIS TAPPAN.

On the 3d December, I addressed the following to Mr. Parker, but on account of absence from the city it was not sent until December 15.

BROTHER PARKER,—Being obliged to leave the city on a journey of about ten days, I shall be unable to attend the Monthly Concert this evening as I intended. I enclose a very interesting letter from a young man—a printer—who is at the Sandwich Islands, that you may be pleased to read at the M. C. Please return it to me.

I take this opportunity to inform you that a call has been signed by about thirty members of the church, for a meeting of the brethren and sisters, who approve of anti-slavery principles, to form an anti-slavery society in the Tabernacle Church and congregation. More than twenty more are ready to sign it. A society will be formed. I have not time to explain to you all the objects intended; but as I do not wish to do any thing in the church without giving you early information of it, I will observe that the object of the society will be to aid in promoting the abolition of slavery in the United States, and especially to purify the Church at the North as well as at the South, from all its pollutions, by appeals to the hearts and consciences of men, by warning, entreaty and earnest prayer, and the application of the Bible doctrine of immediate repentance to the sin of slavery. We shall be prudent and kind, and while we try to extend anti-slavery principles in the Church, endeavor to promote piety and the conversion of sinners. This measure has been commenced in a good spirit, and you will find that the persons who have signed the call are among the most active and devoted members of the Church. It is not a belligerent measure, but one begun in prayer, and if I mistake not, it will produce much good to the whole Church—if some do not oppose the measure in a way to do mischief. Yours, very truly,

Dec. 3, 1838. L. TAPPAN.

A copy of the call referred to in the above letter is subjoined:—

CALL.

"We, the subscribers, believing that the existence of slavery, and the treatment of the people of color in our land, are crying national sins that threaten to eat out the piety of the churches, destroy the well-being and union of the States, and to bring down the judgments of God upon the churches and the nation, and that it is our duty to do all we can in a kind and Christian manner, to bring about a reformation with regard to said sins, particularly in our own church and congregation, do hereby invite a meeting of all the brethren and sisters, who feel it to be a privilege and duty to associate together for the above purpose, to meet at such time and place as any three of our number may notify us, for the purpose of forming an Anti-Slavery Society in the Church and congregation of Broadway Tabernacle.

"New-York, December 1st, 1838.

This call was signed by eighty-one persons, seventy-eight of them being members of the Broadway Tabernacle Church, and the others belonging to other churches, but members of the congregation. There were other reasons, besides promoting the Anti-Slavery cause, that led to this measure. Those members of the church, who professed these sentiments, were getting disaffected with the refusal of Rev. Mr. Parker to read notices for the "Monthly Concert for the Enslaved and for Free People of Color," and accompanying the reading of other Anti-Slavery notices with prejudicial remarks. It was thought that the formation of an Anti-Slavery Society would serve as a bond of union to the aggrieved members, and prevent them from leaving the church. The ground assumed for declining to read notices for the Concert of Prayer was, the meeting interfered with the regular weekly prayer meeting in the lecture-room. And yet Mr. Parker has read notices, several times, of meetings to be held, for various purposes, at other places, when they interfered in the same way. A notice was put into his hands for a meeting of a Female Anti-Slavery Society to be held in Rev. W. Patton's lecture-room, *in the afternoon*, which Mr. Parker read, but stated

that he wished it to be distinctly understood that he read the notice to oblige those who had desired it, and that his reading it did not imply that he approved the objects of the meeting. The Session also had dismsed, if not annulled, the Anti-Slavery and Temperance resolutions that had long been read at every communion service and which candidates for admission to the Church were required to assent to, without the consent of the Church having been first obtained. After seventy-five persons had signed the call, seventy-two being members of the church, and the others professors of religion, connected with the Sabbath School or congregation, the pastor, on Lord's Day, December 16th, requested the members of the church to remain after the morning service, when he read to them a paper which, he stated, originated with the Session, and had been adopted by them, disapproving the formation of the proposed society. It was respectfully stated to the church, at the time, by Lewis Tappan, who had signed the call, that the Session had in some respects, misapprehended the motives and intentions of those who invited the meeting; that the measure was a peaceful and Christian one; and that in the exercise of their "Christian liberty," the signers to the call would feel it to be their duty to proceed and form the society.*

On the 18th December a committee of the officers and teachers of the Sabbath School, held in the lecture room, consisting of Messrs. Tappan, Smith, and West, waited upon the Session to remonstrate against an order of the trustees, that had been sanctioned by the Session, excluding the school from the lecture room, that it might be occupied by the school formerly belonging to Dey-street Church, that, since the union of the churches, had occupied a large and convenient room in the Tabernacle. During this interview, the occurrences of last Lord's day were alluded to, in conversation introduced by some of the elders, and some remarks were kindly made in reply by each member of the committee.

On the 19th December I received a Citation from the Session, of which the following is a copy, together with my reply :—

Mr. Lewis Tappan,

Sir,—In conformity to a resolution of the Session of Broadway Tabernacle Church, passed Dec. 18, you are hereby cited to appear before them on Tuesday evening, Jan. 8, 1839, at the Tabernacle Study, to answer to the charge of disorderly and unchristian conduct.

By order of Session,

New York, Dec. 19, 1838. Wm. D. Coit, *Stated Clerk.*

New York, Dec. 19, 1838.

Mr. Wm. D. Coit,

Stated Clerk of the Session of Broadway Tabernacle Church.

Dear Brother,

I have this day received from you a Citation to appear before the Session on Tuesday, January 8th, to answer to a heavy charge. As no specific accusation has been communicated to me, and as I am not conscious of having done any thing "which is contrary to the word of God, or which, if it be not in its own nature sinful, may tempt others to sin, or mar their spiritual edification," I am unable to conjecture the source or nature of the charge preferred against me. But, believing that the good of all concerned will be promoted by a speedy trial, I request you to submit to the Session my desire that a copy of the charges be furnished without delay, with the names of witnesses to support them, and that citations be furnished for such witnesses as I shall nominate, to the end that the judicatory of the Church may, by consent of parties, enter on the consideration of the crime or crimes alleged at the first meeting.

I remain, dear Sir,
With Christian affection,
Your friend and brother,
Lewis Tappan.

No notice was taken of this letter, and, up to the 8th of January, I was kept in profound ignorance as to the nature of the charges that were to be brought against me; but it was generally—if not universally—supposed, up to the day of arraignment, that the citation referred to Anti-Slavery action. And it is believed that the Session were induced to change their ground, owing to a belief that, should they persevere in the course originally contemplated, they would meet with a signal discomfiture. Determined, however, to proceed, with a view to drive from the Church a member whose presence and influence was disagreeable to them, they framed an indictment for slander, &c., founded upon the accusations brought against Mr. Parker, at the meeting of the Church on the 24th Sept. previous! As evidence of such a determination, I quote from a broad sheet, issued by Mr David Hale, and sent abroad over the land, entitled, "Facts and Reasonings on Church Government, addressed to the Members of the Broadway Tabernacle Church." In this Mr. Hale says, "Still more, and worst of all, I know that at least one of the judges (Dr. Bliss being the elder alluded to by Mr. Hale) had made up his mind, and determined to convict the accused before the trial commenced; for he told me that "something must be done to break down the influence of Mr. Tappan." This was said to me and repeated, without any charge of confidence being imposed upon me. Surely such a judge, or a court with such a judge upon its bench, was not fit to try any one."

On the evening of the 8th January, 1839, I repaired to the "Study" of the Broadway Tabernacle, agreeably to the citation, accompanied by a short-hand writer and several members of the Church, when, after the disposition of other matters, they proceeded with my

TRIAL.

January 8, 1839.

Session met at the Study.—Present, Rev. Mr. Parker; Elders Bliss, Doremus, Faxon, Colton, Joy, and Coit.

Opened with prayer.

Minutes of last meeting read and approved.

Mr. Lewis Tappan appeared, agreeably to cita-

* Accordingly, after due notice, a meeting was held in the lecture room of Broadway Tabernacle, on the 21st day of December, when an Anti-Slavery Society was formed, a constitution adopted, officers elected, and an address to the church read and approved. Upwards of eighty members of the church signed the constitution, or authorised their names to be put to it.

tion; whereupon Dr. Peters being present, by request of Session, was requested to preside as moderator in this case.

It was, on motion, resolved, that the Charges and Specifications be read, which was done, and a copy of the same, with a list of witnesses, given to the accused.

CHARGES AND SPECIFICATIONS.

Mr. Lewis Tappan is charged, by common fame, with disorderly and unchristian conduct, in the following particulars, viz.—

1st. Specification.

He is charged with slandering the character of the Rev. Mr. Parker, and with misrepresentation, in violation of the precepts of the Holy Scriptures, wherein it is required that Thou shalt not bear false witness against thy neighbor, Exod. xx. 16. Thou shalt not raise a false report, Exod. xxiii. 1. Whoso slandereth his neighbor, him will I cut off, Psalms ci. 5. Speak not evil one of another, brethren, James iv. 11. Let all bitterness, and wrath, and anger, and clamor, and *evil speaking* be put from you, with all malice, and be ye kind one to another, tender-hearted, forgiving one another, even as God for Christ's sake hath forgiven you, Eph. iv. 31.

He is charged with doing this at a meeting of the Church, convened on the evening of the 24th September last, for the purpose of considering the propriety of giving the Rev. Mr. Parker a call to become the pastor of this Church; and, among other slanders, charging him with great inconsistency in his preaching and conduct, before and since his residence in New Orleans, on the subject of slavery.

And he is particularly charged with endeavoring to fasten upon Mr. Parker the imputation of inconsistency, in signing a paper, containing a declaration or recommendation of a volume written by the Rev. Mr. Phelps on slavery, in which abolition sentiments, according to a particular creed, are avowed. In doing which, he attempted to show, that the Rev. Mr. Parker, at the time of doing it, entertained the peculiar sentiments therein expressed, and afterwards adopted and maintained opposite sentiments in New Orleans.

Witnesses to prove the above allegations:

John M. Briggs, George P. Fitch, Raymond H. Seeley, Wm. Faxon, Jos. F. Joy, Dr. Bliss, Henry F. Lombard, Ambrose S. Ludlow, John C. Crane.

2d. Specification.

It is charged that, on the same occasion and place, Mr. Tappan characterised the Rev. Mr. Parker as a weathercock, and said, in substance, that he would not have his children brought up under the ministry of such a man.

Witnesses to prove the allegations contained in the above specification:—Henry F. Lombard, Ambrose S. Ludlow, Jos. F. Joy, John Briggs, George P. Fitch, Dr. Bliss, Wm. Faxon, John C. Crane, Raymond H. Seeley.

3d. Specification.

Mr. Tappan is charged with reiterating this slanderous accusation of inconsistency in the Rev. Mr. Parker, and giving it a still wider circulation, in a letter published in a newspaper called the Liberator, on the 30th of October, 1838, and professedly written to correct misrepresentations made in a communication over the signature of Henry W. Davisan, in the same paper of the 5th of October.

For proof of this allegation, reference is hereby made to the Liberator, published at the above named date.

4th Specification.

Mr. Tappan is charged with propagating the slanderous accusation of inconsistency, in relation to the Rev. Mr. Parker's signing the recommendation of Mr. Phelps' book, although he had been informed, in the autumn of 1834, of the manner in which the Rev. Mr. Parker's name became attached to the same. But more particularly is it charged, that Mr. Tappan had correspondence with the Rev. Mr. Parker in 1835, in relation to this matter, and was in possession of the facts relative thereto, when he propagated those slanderous accusations, and believed them to be false, as will appear by a letter written by him to the Rev. Mr. Parker, under date of the 2d of May, 1835: wherein he declares, that he believes the representations of Mr. Parker, that he signed, or authorised his name to be signed to the declaration or recommendation in Mr. Phelps' book, without knowing what doctrines Mr. Phelps was going to maintain, and as only favoring investigation, without having read it, and from having been told, that it was simply a recommendation to make a book, discussing slavery.

For proof of this allegation, reference is hereby made to such parts of Mr. Tappan's letters to Mr. Parker, of the 17th January, 12th March, and 2d May, as refer to this subject; and also to a copy of the Rev. Mr. Parker's letter, dated the 9th of April, 1835, addressed to Mr. Tappan, in which a full explanation is given of the circumstances of the case, by the Rev. Mr. Parker, and reference is had to a conversation had in the autumn of 1834, in relation to this matter.

Witness to prove the conversation between Mr. Tappan and the Rev. Mr. Parker, in the autumn of 1834, and to prove copy of a letter of Rev. Mr. Parker to Mr. Tappan, of the 9th April, 1835, the Rev. Joel Parker.

Witness to prove Mr. Tappan's hand-writing—

5th. Specification.

Mr. Tappan is charged with propagating these slanders, and falsifying his word before the Church, and in a newspaper, as before stated, after having declared, in the letter to the Rev. Mr. Parker, dated the 2d of May, 1835, while referring to this subject, and expressing his belief in the statement of the Rev. Mr. Parker, that he would not quarrel with Mr. Parker, nor hurt his reputation, nor his feelings.

For proof of the above specification, reference is hereby made to Mr. Tappan's letter, dated 2d May, 1835, addressed to the Rev. Mr. Parker.

6th Specification.

Mr. Tappan is charged with slandering the Rev. Mr. Parker in a conversation with Dr. Bliss, on the evening of 24th September last, after the meeting of the Church to give the Rev. Mr. Parker a call, in the presence of several of the brethren. At which time Dr. Bliss remonstrated with Mr. Tappan, for having made various slanderous accusations against the Rev. Mr. Parker at the Church meeting, without his having first called on Mr. Parker, to obtain facts and explanations of the things alleged against him; and when Dr. Bliss expressed a confident belief, that, if he had done so, Mr. Parker would, in a half-hour's conversation, remove every imputation upon his character and conduct, to the entire satisfaction of Mr. Tappan: he, in reply, declared, he would not call on a man whom he regarded as the murderer of his friend Lovejoy.

Witnesses to prove the allegation contained in this specification, Rev. Dr. Peters and Dr. Bliss.

Wm. D. Coit, Stated Clerk
of Broadway Tabernacle Church.

Mr. Tappan waived his privilege as to time, to which he is entitled.

It was, on motion, resolved, that Session proceed to trial, Mr. Tappan having consented thereto.

The accused objected to the competency of three members of the court; his objections were over-ruled by moderator.

The reader will please to bear in mind, while he reads the following account of the proceedings of the trial, that the copy of the record of the Session is *leaded*, and that the other proceedings —omitted by the Session—is in *solid type*, and is included in *brackets*. All the proceedings on the first and third evenings of the trial were taken down in full by the short-hand writer, who has since accurately written them out; the proceedings of the second evening were taken down in full by the accused; and both are correctly printed. Some immaterial matter is omitted, but the main part of all the proceedings is printed, and in the very words of the speakers. It will be seen that several important parts of the testimony, and other proceedings, that ought to have been recorded by the Session, are omitted by them. Although the accused is far from justifying any improper expression he may have used, or even every position he assumed, yet it should be remembered, that some of those who sat as his judges, had declared previously, that "something must be done

to break down the influence of Mr. Tappan;" and during the whole trial, they manifested, as will be seen, an oppressive spirit. The suppression of testimony, and also of the reasons for several decisions, on the part of the moderator and Session, show the necessity there was of the accused having a reporter—especially when it is considered, that, according to the Book of Discipline of the Presbyterian Church, "nothing but what is contained in the record, may be taken into consideration in reviewing the proceedings in a superior court."

[The accused said, "I appear here, in compliance with a citation, to answer to the general charge of disorderly and unchristian conduct, of the nature of which I am perfectly ignorant, though I am informed it has been communicated by members of the church." He afterwards added, to account for the presence of the reporter of the proceedings, "Mr. Sutton, a Stenographer, appears here at my request, to record the proceedings." The moderator having observed that they could not proceed further, that evening, without the consent of the accused, Mr. Tappan stated that he was perfectly willing to waive his privilege of requiring ten days' notice previous to the court going into proof of the charges, and that the trial should then proceed, as he had already expressed, in a letter to the clerk, on receiving the citation. But he wished to state some objections to three of the elders sitting as judges in this case. The moderator said "the Session are ready to hear your objections to be tried by this tribunal." Dr. Bliss said he did not understand what the accused party meant by saying he was ready to proceed to trial by this tribunal, and then getting up and objecting to be tried by them. The accused said Dr. Bliss had misunderstood him. He did not object to be tried, but he wished to offer objections to some of the elders sitting as judges, who had prejudged the case. The moderator said, "As *Common Fame* is the accuser, it is out of order to make objections. If a single individual were the accuser, Mr. Tappan might object to that individual; but he has no right to challenge this body." The accused said he appreciated the observations of the moderator, but he wished to state that he was called before men—brother Parker for instance—who had declared they would destroy his influence in the church. The moderator said, "Brother Parker is not a member of the Session." The accused replied, that Mr. Parker was present, and he had declared he would destroy his influence in the church. Mr. Parker said, "I did not say that either." The accused replied, "It was said to me in your study." Mr. Parker said, "It was not." The accused said, "It was."* The moderator said, "I must stop this—it is out of order." The accused remarked, "Brother Parker is out of order in this, yet——" He was interrupted by Dr. Bliss, who said he hoped some one would take minutes of that. The accused replied, that the Stenographer would take the whole down, and it would go forth to the public. He went on to say, that Mr. Dorcmus, (another of the elders,) had personally complained—— The moderator, interrupting, said, "I cannot hear that. If Mr. Tappan has anything to complain of, it is *Common Fame*." The accused asked if it was out of order for him to speak of the impropriety of judges trying him who were prejudiced? The moderator said, "It is out of order." The accused then asked, if he could not challenge a judge, who had undue bias. The moderator said, "I know of no authority by which it can be done. Common Fame is the accuser, and not any individual member of the Session." The accused said the charges originated with the Session. No complaint had been made to them. They originated there, and he therefore considered the Session as the accuser, though technically it was "Common Fame." The moderator then read a clause from the Book of Discipline, and remarked, "It appears to me perfectly clear, and it must be clear also to Mr. Tappan's comprehension." The accused said, he challenged brothers Dorcmus and Colton, as persons who ought not to sit in judgment upon him in that case, as they were interested persons; and he would include Dr. Bliss also, because he had declared that the accused had uttered things which he knew to be untrue, and had induced prejudiced persons to come before the Session to testify against him. The moderator said, "It is my opinion that Mr. Tappan has no right thus to challenge members of the court—for he might challenge all, and what would be the effect? The constitution has fixed the form—the constitution under which the accused has placed himself. Common Fame brought the charges, and whether they misjudged or not, they must listen to Common Fame, and proceed to trial." The accused said, he held that they were the authors of this Common Fame. The moderator replied, "That you may prove, but it is out of order to plead it as a bar to your trial." The accused said that it was what he should plead, and which he should carry up.

The moderator, addressing the accused, inquired, "Have you two clerks here?"—alluding to the Clerk of the Session and the Reporter. The accused replied in the negative, and said, this gentleman (pointing to Mr. Sutton,) is a Stenographer. Moderator—"Employed by you?" The accused replied in the affirmative. The moderator said, "I want to know by what authority." The accused replied, that he attended at his request, to take down every word that was said.

The accused said he thought his judges ought to be free from malice or bias of mind. Now he was able to prove, that since he had been cited, they had, by their own acts, rendered themselves incompetent to sit as judges in this case. The moderator said, "You are out of order, sir; if you have any charges to bring against them, the regular way is open to you; but you cannot, at this stage of the trial, arrest it by exceptions. You have been called here, not by one individual, but

* In the Presbytery, subsequently, the appellant stated, in Mr. Parker's presence, that he had written down his conversation with Mr. Parker, immediately after reaching his home—and the precise expression he uttered was, "I will try to limit your influence in the church." It appears, therefore, that while the accused used the word *limit* instead of *destroy*, Mr. Parker made the denial as if the charge was wholly groundless.

by Common Fame; and your remedy is perfectly clear, if the Session judge unrighteously. You can appeal, if you can make that appear clear. But I cannot, as moderator, if the accused objects to the whole court, decide that they cannot proceed, and thereby annihilate the court." The accused said he did not suppose he would do that, but if it could be shown that there was one improper person on the bench, one related to the party, one entertaining malice, or otherwise disqualified, was it not, he asked, proper to make the exception? And if an appeal should be taken to a higher court did they not think the objection would be held to be good? Is it not proper for the accused, if he could, to show that some members of the Court were incompetent to sit in judgment? If the moderator decided otherwise, he should like to have it recorded. He believed it to be one of the fundamental principles of law, that an accused person should not be tried by a judge who had made up his mind, or who entertained malice, for this would unfit him from holding the scales of justice with an even hand. He said he claimed the right to show, that members of that Court—not the whole Court—had placed themselves in that situation; and that, as partial men, they were disqualified from sitting in judgment in the case. The moderator referred to the Book, and said he could find no authority to challenge members of the Court. He asked the accused if he could point out any. The accused desired the short-hand writer to record that the moderator decided against this right to challenge members of the Court. The moderator, interposing, said, "Do not dictate to the Stenographer." The accused explained that he had merely requested that the moderator's decision might be recorded. The moderator said, "I beg that the Stenographer may be allowed to record my words without dictation." He then asked the accused again if he could show him any authority on the subject of taking exceptions to judges, in the book. The accused said, it appeared to him a well understood principle, in civil and ecclesiastical courts, that interested and prejudiced persons should not sit as judges. The moderator said he thought the accused's remedy was clear. The accused replied that he knew that his right to appeal was clear, but he claimed the privilege of showing the incompetency of members of the Court, and he believed he was right. Dr. Bliss said he supposed it was equally as competent to object to the whole as a part. The moderator said, "it is easy for an ingenious person to change the face of an accusation, and make it appear as the trial of somebody else, rather than that person's; and my opinion is, that to deviate from the book, would be calamitous. It is the way of safety, as well as of principle, for accused persons to adhere to the book, and submit to the authority which was placed over them, as they have a court of appeal above." The accused said he did not deny the authority of the book, but his impressions were, that trials by ecclesiastical courts should be conducted on the principles that govern courts of law and equity, in the absence of an express statute to the contrary. The moderator said, "My impression is, that such precedents are not strictly to be appealed to. For instance, we have a provision excluding counsel. This was to keep out technicalities. This is a gospel court, and to be governed by moral principles, and not by technicalities." The accused said he wished it to be understood, that he was not unwilling to go into a full investigation. He did not wish by technicalities to avoid it. It was for principle, and defence of his rights, that he contended, as well as out of regard to others who might be accused, rather than from personal considerations. He wished to go into a full examination of witnesses, should be prepared to summon from eighty to a hundred, with the determination that a full examination should be had; and he did not wish to have it understood that he meant to shun such an examination by making the remarks that had fallen from him.

The moderator asked Mr. Parker, as this was to him a new case, whether he had any recollection of any case wherein objections were made to members of the judicatory? Mr. Parker said, he had never seen it done before. It was always supposed that an accused person could not take exception to the court; for, as the court could not be expected to condemn itself, it could not be excepted to. "Then you agree with me," said the moderator. Mr. Parker replied, "Yes, I suppose so." The moderator then said, "If there is any variation from the principles adopted in civil courts, or if injustice is done, Mr. Tappan has his remedy." The accused said, that injustice would be done where a person was condemned by improper judges, though he had the right of appeal. In civil courts, judges retire from the bench if they are interested. The moderator said, he had known a person sit in judgment on his own son. The accused requested permission to say a few words more. The moderator replied, "I am not willing to lose much more time." The accused said, he should not take up much more of their time. If judges in civil courts would retire from the bench, when causes came before them in which they were interested, should Christians be less scrupulous than men of the world? He mentioned a distinguished lawyer, who, in the midst of a cause he was trying, was called to the stand as a witness in the case, and immediately declined acting further as counsel, so scrupulous was he to avoid the appearance of impropriety. Now if, in civil courts, lawyers and judges are so extremely cautious——The moderator, interrupting, said, "That was not a judge." The accused then mentioned a case where Judge Edwards would not try a cause, because one of the parties was his cousin. If men in civil courts, he repeated, were so scrupulous, would men sit there who had already made up their minds? The moderator said, "I pronounce, sir, that you are out of order." Mr. Parker said, "If I may be allowed to make a remark, I think that in the upper courts I have heard it said, by a person making complaint, 'the session, or lower court, that tried me were not impartial men.'" The moderator observed, "Almost always, so that this is not a singular case." The accused asked that it might be made a matter of record. He had no personal considerations in the course he had taken, but he wished to prevent a precedent that he considered would be trampling upon liberty. One of the elders asked whether it would be a matter of record. The ac-

cused said, he required that it should be so: and if it were required, it must be done. The moderator asked him for his authority. Mr. Parker said, he believed Mr. Tappan was right. The accused referred the moderator to page 399, sec. 23. "In recording the proceedings, in cases of judicial process, the reasons for all decisions, except on questions of order, shall be recorded at length—that the record may exhibit every thing which had an influence on the judgment of the court."

The moderator said, "These are questions of order." The accused inquired, whether all the decisions that had been made were questions of order? The moderator replied in the affirmative.

The accused inquired, whether he should name the witnesses that he required to be cited? The moderator said, it was not necessary. The accused said, it was necessary that the clerk should cite the witnesses he required. The moderator asked for the authority. The accused referred him to the book. The moderator inquired whether the accused wished witnesses cited that were not then present? The accused said he did—and subjoined, that he did not set that tribunal at defiance; he had only made exceptions, and if they were over-ruled, he was ready to proceed. He expected to be absent on one or two journeys, and would take it as a favor if they would proceed that night, and fix an early day to continue the trial. He urged, as a motive to dispatch, that it would take many weeks to finish the trial: he had one hundred witnesses; and he should claim the privilege of having every question and answer reduced to writing and signed by the witnesses; so that they would make slow progress. He wished every thing to be made matter of record, for the information of the community, for publicity would be given to the proceedings as soon as they were concluded. Dr. Bliss said, he would name Friday evening, if the accused party consented. Mr. Tappan objected; he had understood they had consented to proceed now. Dr. B. said they had not consented. Mr. T. said, he had understood they had. The moderator again asked, whether the Session was ready? Dr. Bliss said, their witnesses were not there. Mr. Tappan remarked, that Dr. Bliss was one of the witnesses himself, and he had some witnesses present. Dr. B. said, he supposed it was competent for them to examine such witnesses as were there. The moderator said, he perceived that his own name was on the list of witnesses, and it would be improper, he thought, to retain him as a witness and to retain him as moderator also. He added, no witness, who is not a member of the judicatory, can be present during the proceedings, unless with the consent of parties. Mr. Tappan remarked, that the moderator himself was a member of the judicatory: the moderator replied, that he was only presiding officer. The accused said, he was there as chief justice, but he would not object to his remaining. The moderator read a clause from the book, and remarked, that it would be proper to call a witness, and that the others would be under the necessity of retiring. The accused said, "unless they remain with consent of parties." The moderator said, "Yes." The accused then said, he consented that all the brethren present might remain.

The moderator said, it was a matter of usage, in cases of Common Fame, to appoint some person to conduct the trial, but the member so acting was not allowed to sit in the ultimate decision. They ought to appoint some one of their own body for that purpose. He inquired of Mr. Parker, whether he had any knowledge of the practice in such cases? Mr. Parker said, it was a common practice, but they were not obliged to adopt it. The accused asked, if it would do for Mr. Parker to undertake it? Mr. Parker said, he was not a member of the session. The accused asked, if he could not be made a corresponding member? The moderator replied, "No, not of the Session." In reply to some other question, the moderator said, his views on the subject were confused. Dr. Bliss and others said, they did not know that it was material to appoint a person. The moderator said, it was optional to do so or not, and it rested, as he supposed, on the ground of usage very much. Dr. B. supposed it was competent afterwards to appoint one if they found it necessary to expedite business. The moderator said, "Certainly, now or at any time; I only wish to expedite business." Dr. B. then inquired whether Mr. Briggs was present? Mr. Briggs answered, but said he had been cited by the name of John M. Briggs, which was inaccurate, his name being John Briggs only. The accused said, he should not object on that account.

EXAMINATION OF JOHN BRIGGS.

Mr. John Briggs was then affirmed.

Examined by Dr. Bliss. Were you present on the evening on which the church met to consider the subject of presenting a call to Mr. Parker? Ans. I was.—It was, on motion, resolved, that when Session adjourn, it adjourn to meet at the Study, on Wednesday evening, at seven o'clock. It was, on motion, resolved, that it be entered on the minutes as evidence of the litigious spirit of the accused, that he stated, that as he should go into a rigorous cross-examination of witnesses, he should not probably be able to reach his witnesses till the month of February; and that he stated, that he should produce one hundred witnesses, and have all the questions and answers reduced to writing, and signed by the witnesses; and that he declared that he would, if necessary, carry the case up to the General Assembly, and should be happy to have the opportunity of presenting it before all the courts.

Examination of Mr. Briggs resumed. Q. by Dr. Bliss. Do you recollect Mr. Tappan, in his speech before the church, charging the Rev. Mr. Parker with great inconsistency, both in his preaching and conduct, before and since his residence in New Orleans, on the subject of slavery? Ans. He made such a charge against him.

[As the clerk recorded the answer, Dr. Bliss suggested the addition "at that meeting," on which the accused rose and said, he objected to any member of the court supplying omissions of the witness. The moderator said "The court has

the right to put another question, to have that part of the answer out, if it pleases." Dr. B. said, "then I will ask if it was at that meeting?" Ans. It was. The accused desired the witness not to reply until the question was recorded by the clerk. At this stage of the proceedings Mr. Fitch entered the room, and Dr. Bliss said, that as he would be a witness it would not be right that he should remain without the consent of parties. The accused said he objected.* The moderator then asked, "Does the court object or consent to all retiring?" Dr. Bliss said he thought there were reasons why they should retire. The accused said, before they retire it will be advisable to fix upon a time when they shall come again. Dr. Bliss suggested to-morrow evening. The accused said he had an engagement that evening, but he would waive that. He would, however, mention, that the room they were in would be too small for future meetings, as there was great curiosity to attend, and the lecture-room might be too small. He merely apprised the Session that many were desirous to attend, and more would have been here to-night had they not been requested not to do so. Dr. B. said it was for the Session to determine when they would meet again. They might fix on to-morrow morning at six o'clock if they pleased. The moderator said, "Undoubtedly." But, said Dr. B., the Session would, of course, consider the circumstances of the accused. The clerk inquired if a witness were present, when another witness was under examination, whether it would render that witness afterwards incompetent. The moderator said, "It would, as I understand the book. My decision is that any person present during the progress of the case will hereafter be incompetent as a witness." The accused observed that it would be a singular decision in a civil court. The moderator then asked Mr. Parker whether he had the same views on the subject as himself. Mr. Parker replied that he had a doubt about it. His impression was that the accused was bound to give a list of his witnesses. The accused replied that he had offered to do so in the early part of the evening. Mr. Parker repeated that the list ought to be given. The moderator said, "I think it proper that Mr. Tappan present his list of witnesses now." The accused said he was ready to comply, and he requested the clerk to take down the names as he should read them from his memorandum. He began to read, when the moderator interrupted him and said, "Mr. Tappan can furnish a list hereafter." A motion by Dr. Bliss, that when the Session adjourn it adjourn to the following evening, was put and carried.

Some conversation took place about citing witnesses, when the accused said that the examination would occupy several weeks, for as he should go into a rigorous cross-examination of the witnesses, and should require the questions and answers to be recorded and signed by the witnesses, he did not see how he could come to his witnesses before the next month. Dr. B. hoped that the declaration would be recorded as evidence of the litigious spirit of the accused. The motion was seconded and carried. The moderator then asked the accused to repeat it. He repeated the substance of what he had stated, and added, he had not supposed the court would sit from day to day. The moderator said, "Perhaps they will make a business of it." The accused said, he had supposed they would take the usual time; he disclaimed entirely the imputations cast upon him by Dr. Bliss, and he thought it would be proper for judges to keep their minds unbiased, and avoid making improper imputations. The moderator called the accused to order, remarking that he was making improper observations. It was then resolved that persons named to be hereafter examined should retire. The clerk then read the resolution as recorded, relating to the litigious spirit of the accused—who rose and said, he had made the observations supposing that the meetings would be held as usual. Dr. Bliss, said as the accused had told them he had one hundred witnesses, and should require that every question and answer be recorded, and had repeated those remarks, he thought it evidence of a litigious spirit, and therefore he wished it recorded. The accused inquired if it was usual to record the spirit manifested by the party on trial. The moderator replied, that the court had a right to make the record as they had done. Dr. B. desired that the resolution might be read again. The accused said he protested against such a record being made; that tribunal was not, by its own professions, sitting there to accuse him itself. The moderator said, "You are out of order again. I have decided that we have the right to make a record of it." The clerk again read the resolution, which, after having received some amendments from Dr. B. was put and carried. The accused remarked that he acted conscientiously in what he did, and he wished the questions and answers recorded that they might travel up to the General Assembly. Dr. B. inquired whether he was to understand that it was Mr. Tappan's wish that it should pass up to the General Assembly. He replied in the affirmative. Dr. B. then desired that that also might be recorded. The accused explained that he wished the record of the whole proceedings preserved that it might pass to the General Assembly *if necessary*." The motion was then put and carried. The accused said he wished also to say that he was desirous the case should go to all the courts below the General Assembly. Dr. B. desired to have this recorded also. The accused observed that he had made the remark that it might be recorded, as he wished to justify his conduct before all, and to see that liberty was not trampled upon. The clerk read the resolution. Dr. B. suggested the addition of the words, "as evidence of the litigious spirit of the accused." Mr. Tappan desired that the name of Dr. Bliss might be inserted in the record, if it could be done, as the mover of these resolutions. The moderator said it was not necessary unless Dr. B. wished to have it done. The clerk then read the resolutions as recorded, when Dr. B. went to the clerk's table and dictated some corrections. The accused denied the right of any member of the court going to the clerk and altering the records. The moderator decided

* Mr. Fitch was a witness who had been cited on the part of the prosecution, and who could not, therefore, be the book, remain without the consent of the parties. The witnesses of the accused, it was contended, might remain, provided they had not been cited.

that Dr. B. had the right to do so, and that any member of the court had that right.

The clerk again read, and Dr. B. suggested another amendment, to which the accused objected, but the moderator overruled the objection. The clerk once more attempted to read the record, when Dr. B. suggested some further amendments, on which the accused reiterated his solemn protest against that mode of proceeding, but the moderator pronounced him out of order. The accused said he objected to a member of the court going to the clerk and adding to the records. Dr. B. defended the course adopted, and the moderator pronounced it right. The clerk again commenced and continued reading what he had recorded, under the dictation of Dr. B., and while this was going on the accused denied that Dr. B. was correctly recording what he had stated. The clerk therefore read the record once more, and the moderator declared that he should, after that, require that all motions should be reduced to writing by the mover, to save the time both of the clerk and the court.

After the clerk had finished reading the record the moderator asked whether they were exceptionable. The accused said he excepted to them, for he had not made the statements in the order in which they were recorded. The moderator inquired whether the Session decided that the accused had stated them as they were recorded. One of the elders said he thought their *spirit* was retained. The examination of the witness was then resumed. Question by Dr. Bliss. Do you recollect Mr. Tappan trying to fix upon the Rev. Mr. Parker——The accused interposed, and observed that it would be better for the question to be stated to the clerk, and for him to read it to the witness after it was recorded. The moderator said he supposed Dr. B. was asking the question from the paper containing the charges against the accused. Dr. B. said he was. The paper was then placed before the clerk, and he commenced writing from it, when one of the elders inquired whether there would be any impropriety in the person asking the question writing it himself. The moderator said "none whatever—there may be two or three of you writing, and you will get along the quicker." The clerk then read the question as follows—Do you recollect Mr. Tappan endeavoring to fasten upon Mr. Parker the charge of inconsistency in signing a paper written by Mr. Phelps on slavery? Answer—I do. Q. by Dr. B. Do you understand that that Declaration or recommendation to contain, or to avow, abolition sentiments according to a particular creed? Ans. I understand the book to avow that. Q. by Dr. B. The paper that Mr. Parker signed? Ans. Yes. The moderator remarked "the paper itself will show whether that is true or not I suppose" Dr. B. said, yes.

The clerk n[illegible] read over the previous questions, with the answers of the witness, and when he had concluded, the witness asked what was meant by a particular creed and——. The accused rose to a point of order. He deemed it irregular for the clerk to read the questions from any thing but the record, and he was reading from the paper containing the charges against the accused or some other document.* The moderator decided that the clerk might have his minutes on any papers whatever for the purpose of reading them. The accused inquired whether the clerk was not obliged to have his minutes in order. The moderator said "yes," and then told the clerk he might have them on separate pieces of paper if he liked, and put them in order at his leisure. The accused took exceptions to this. The moderator said the accused could not object, and by so doing he would be out of order. The accused said such a course as he protested against was out of order, and would not be allowed in any court whatever. The moderator said the clerk would proceed in his own way, and the court would correct the records at the close of the session, when the accused might state his objections, if he had any. The accused said he claimed to have the questions and answers entered *seriatem*.

The clerk again read the question, when the witness said he understood the paper to avow abolition sentiments, but he did not know what they were. Question by the moderator. Do you understand the question? Without giving the witness time to reply Dr. B. asked, Was it the doctrine of the persons arrogating to themselves the title of abolitionists? The moderator said, "you mean, Dr. Bliss, the paper signed by Mr. Parker." Dr. B. said, yes. The accused said he objected to such remarks until the witness had given his answer. The moderator said, "you will have the answer in due time. I wish the witness to understand the question, for I have not understood it myself." Dr. B. said the charge was that that recommendation contained abolition sentiments. The moderator said, "Well, what do you want on that subject, but the paper itself?" Dr. B. said, "well then, I will withdraw the question, and move that this Declaration be made matter of record. The moderator said, "it is not necessary to make every book you read a matter of record." The clerk asked, "is the question withdrawn?" The accused said he objected to its withdrawal. The moderator said, "your objection is overruled—the question is erased." Dr. B. moved, and it was seconded, that the Declaration be read. The moderator said, "you had better wait until you have done with this witness." Dr. B. said—my next question is —— The moderator said, "confine yourself to the specifications." Q. by Dr. B. Did you understand that the accused at the time of having made the accusation endeavored to show that Mr. Parker at the time of doing it entertained the sentiments expressed in that book? The clerk was reading the question aloud, as he was recording it, to which the accused objected. The moderator said "you are out of order—this must be stopped." The accused again objected, but the moderator said "the clerk may read aloud if he please, and then Mr. T. may ascertain whether the question was properly written down." The accused said, "Mr. Moderator, in justification of myself I beg to read ——" The moderator interrupted, and said "you are out of order, Sir, and cannot go on with any other business till we have got through this."

The clerk said, the question is,—"Did you

* A case was mentioned in the General Assembly, by one of the members, who stated that many years ago, in Philadelphia, the moderator of a Session let the witnesses swear by wholesale. He would read the indictment against the accused to the witness, and then ask, Is not this true? "Yes," was the prompt reply.

understand that Mr. T. endeavored to show, that, at the time, of signing the Declaration, Mr. Parker entertained the peculiar sentiments therein expressed, and thereafter adopted, and maintained opposite sentiments in New Orleans?

[The reader will bear in mind, that the proceedings that were recorded by the Session are in leaded type, and the other proceedings are in brackets.]

[The witness paused, and the moderator desired the clerk to read it again. The clerk repeated the question, when the witness answered, I did. Dr. B. was observed making some erasure in the question and answer, on which the accused said he objected to Dr. B. making any alterations in the question or answer. The moderator said Dr. B. was altering it as it was read, and Dr. B. remarked he had stated part of it twice. The accused said Dr. B. was erasing part of it. Dr. B. denied that he was; he was merely erasing a part he had stated twice. The accused said the moderator could see with his own eyes that Dr. B. was altering it. The moderator replied, "No, sir." The accused then begged to call the moderator's attention to Ch. 6: Sec. 10, page 405, respecting the course to be adopted in taking evidence. It was stated in the book, that the question should be recorded, and then the answer obtained, but Dr. B. had obtained answers before the questions were recorded. The moderator said "The book does not say the question shall be recorded before the answer is obtained." The accused said he interpreted it differently.]

Question by Dr. B. Did you understand Mr. T. at the meeting above mentioned to say in substance, he would not have his children brought up under the ministry of such a man? Answer. I did—or rather that he would not like to have his children brought up under the ministry of such a man unless he repented and made a public confession.

[The moderator assisted the clerk in recording the answer, by repeating it in substance, when the accused said, he claimed the right of having the answer recorded in the very words of the witness. The moderator said, "I claim the right of repeating it to the clerk—to have the questions put, and the answers made, through my mouth, if I please." The clerk then read over the question and answer as recorded, and the moderator, turning to the accused, said, "Let your stenographer put that down."]

Question by Dr. B. Did you understand Mr. T. at the same time to characterise Mr. Parker as a Weathercock? Answer. My recollection is not distinct on that.

Cross-examination.

Question by the accused. Mr. Briggs, are you a deacon of this church? Answer. I am.

[The moderator, addressing the accused, said, "Will you record your question, sir?" The accused asked if he was bound to write it. The moderator replied, "Yes, as much as the clerk. You are a rapid writer, sir." Dr. B said something might be said about the question's relevancy. The moderator, to the accused, "What is it, sir, that I may decide?" The accused said, "I will furnish it to you, sir, in writing."]

Question. Was or was not the meeting of the church, which has been referred to, called for the purpose of a free interchange of opinion respecting the qualifications of Rev. Joel Parker to be the minister of the same church? Answer. I consider it to have been called to consider the propriety of electing him to be the pastor of the church. Question. Did or did not the accused expressly state that he had no unkind feelings towards Mr. Parker, but that what he would state would be from a sense of duty? Answer. I believe this is correct.

[Question. Did or did you not think that each member of the church had a right to express his views and feelings on the important subject before the meeting? The witness said he must appeal to the chairman, whether he was bound to answer that. The moderator said, "I decide that you are not bound to answer it, as it is an irrelevant question."]

Question. Had not Dr. Bliss, at a previous meeting of the church, entered fully into the qualifications of Mr. Parker, and referred to the matter introduced by the accused? Answer. He had.

Question. In stating that you understood the accused to characterise Mr. Parker as a Weathercock, did you refer to Mr. P's supposed inconsistency in signing the Declaration of Sentiment, prefixed to Phelps' Lectures on Slavery, or to the various objections adduced.

Answer. In the Weathercock business I did not testify, as my recollection on that subject was not distinct. Question. Did you observe any unkindness on the evening referred to, on the part of the accused, in speaking of Mr. Parker? Answer. I think I did. Question. Please to specify wherein. Answer. In the general tone of the speech from the beginning to the end. Question. Do you refer to the objections made to Mr. Parker, or to the manner or language of the accused? Answer. To both. Question. To both of what? Answer. Both the objections, and the manner and language of the speech.—The foregoing testimony being read to the witness, was acknowledged to be correctly recorded. It was, on motion, resolved that the further consideration of this case be adjourned to Wednesday evening, at seven o'clock. It was also on motion, resolved, that the clerk be instructed to furnish such citations as Mr. Tappan shall request.

[In recording the last answer of the witness, the words "Of the speech" were added. The accused remarked, the witness did not say anything about—*of the speech*, and said, directing himself to the witness, "Did you?" The moderator replied, "He did?" The accused repeated his question to the witness, "Did you?" The witness answered, "Yes." Question. Have you ever blamed the party accused for the part he

took, in the hearing of any member of the church, and in whose? The witness said, I am not bound to answer that question; I appeal to the chair. The moderator said "I believe it is a principle that a witness is not bound to give an answer that will criminate himself. You are aware of that, Mr. Tappan." The accused replied, Yes, sir. The moderator then said, "Then I suppose you will not put such a question after reflection." Question. Have you ever conversed respecting the accused on account of the part he took at the meeting of the church, with any member of the church, or other person, and with whom? The moderator said, "I pronounce that a similar question to the other." The accused—"and out of order?" The moderator said "I do. If it has any object it is to induce the witness to criminate himself, and injure his own testimony.*" The witness said—"If questions are to be put in that way——" The moderator said, "You too, sir, are out of order." Question. Has any member of the session spoken to you respecting the part the accused took at the meeting of the church, and blamed him therefor, and whom? The witness refused to answer the question, and appealed to the moderator, who said, "My decision is that it is irrelevant." Dr. Bliss said he wished to put a question to the witness that had been suggested by those put by the accused—the question is, Was it your impression from the speech of Mr. Tappan, at the meeting of the church, that he entertained malevolent feelings towards Mr. Parker? Dr. B. inquired of the moderator whether such a question was in order. The moderator said, "I should like to hear the charges again." Dr. B. enumerated the specifications where the accused is charged, he said, with stigmatizing Mr. P. with inconsistency—as a Weathercock—and with saying he would not allow his children to be brought up under the the ministry of such a man. The moderator added, "And there is the charge of unchristian conduct. It is in order I think." The question was again read, when the moderator said, "On further reflection I do not think the impressions of the witness are matters of testimony." Dr. B. said it grew out of the questions of the accused. The moderator said, "You had better not press it." Dr. B. then asked whether it would not be proper to read the testimony over to Mr. Briggs before he signed it, so that if there were any inaccuracies they might be corrected. The accused said he had a question or two to put to the witness first. Have you ever heard Dr. B. since the meeting of the church, speak of the accused as being actuated by malevolent motives? The moderator said "That is an improper question." Question. Do you feel such a deep interest in the result of this trial that your mind is prejudiced against the accused? The witness asked if it were a proper question. The moderator said, "I pronounce it irrelevant." Dr. B. then moved an adjournment to Wednesday evening, at seven o'clock. The accused said he would be glad to meet at five o'clock, but Dr. B. said it would be inconvenient.]

* Although a question cannot be put for the purpose of making a witness criminate himself the accused deemed it proper to show that the witness had made such declaration, as the fact would have a bearing upon his credibility, though it might not affect his competency as a witness.

WEDNESDAY, JANUARY 9th.

Session met at the study.

[After prayer, the accused proposed that the resolution of last evening should be rescinded, and that witnesses and others might be allowed to be present. A great desire had been expressed by those who were to be witnesses, on both sides, and by others, to hear all the proceedings. He had objected last night to a witness on the part of the prosecution being present, but, to oblige members of the church, he was willing to have any present who wished it. Dr. Bliss said he was willing that the persons present might remain, but if there were to be "a hundred witnesses," it might be inconvenient. The accused said he could not consent, unless the restriction should be removed with regard to all. Mr. Doremus thought the most prudent course would be to exclude the witnesses. The moderator decided that no witness, on either side, could be present without the consent of both parties. The persons present as witnesses and spectators then withdrew.]

Mr. Doremus offered the following resolution: Mr. Lewis Tappan having appeared before the Session, to answer to charges preferred against him, and having introduced a Stenographer, with the declared purpose of spreading out whatever may be here said or done before the public, Resolved, that the Session adopt and order to be placed upon their record, the following minute, viz.: Whereas it is desirable, in cases of discipline, especially in the primary court of the church, not to give needless publicity to difficulties which belong only to a single congregation, and whereas, in our apprehension, the accused would be greatly injured by such publicity, since it would unnecessarily extend the knowledge of the offences alleged to have been committed by him, and might create an impression that he was unwilling calmly to wait the decision of the proper tribunals—and whereas the Church may be greatly scandalized before the world by appeals to the public from the decision of her judicatories before a cause has reached the ultimate tribunal, and whereas it would greatly embarrass the operations of justice, and give an undue conspicuousness to our domestic matters, if every private member of the church, when accused, were encouraged by such a precedent to make an appeal to the public—and whereas the accused will be entitled to a full copy of our proceedings in his case, and has, if wronged, an ample remedy in the superior courts—wherefore, Resolved, that this Session feel themselves constrained not to allow the presence of a Stenographer for the purposes declared by the accused.

[Dr. Bliss seconded the motion. The moderator asked whether there were any remarks to be made upon it. The accused said, with the leave

of the court, he would claim the privilege of having a Stenographer present. This was an open court, he apprehended, as all courts should be, and the Stenographer might have the right to come uninvited. But it appeared to him, that in justice to the accused, in furtherance of the cause of Christian liberty, and in justice to the Session and to the church, he ought to be allowed to retain the Stenographer. His intention was to have a record of the proceedings, and if occasion required it, afterwards to publish them. He had not made up his mind definitely on that subject, but he claimed the right of using the notes of the Stenographer according to his own judgment, and the advice of discreet friends whom he should consult. It was not his intention to obstruct the progress of justice and religion, but to advance both; and he thought in the end both justice and Christian liberty would be promoted by a step of that kind. He should think it an arbitrary and oppressive decision to deprive him of the aid of a short-hand writer to make a record of what was said and done in an interesting and important trial like that. He claimed it as a right. The gentleman whose services he had secured, was a religious man, and one who had been accustomed for many years to take down the debates of deliberative bodies, and the proceedings of courts of law. He believed he was eminently qualified for the discharge of his duties—was a man of great integrity—and he had been told was scrupulously faithful in his profession. He hoped, therefore, such a resolution would not be adopted in that Session, as he should consider it a great grievance—an attempt to extinguish truth, besides being a measure particularly oppressive to him. The resolution was carried, and the short-hand writer immediately withdrew.

The accused then proposed that the decision of the whole matter should be referred to the Presbytery, on account of the bias of mind manifested by a majority of the members of the Session against the accused, and the "deep interest in the result of the trial" exhibited by them, indicating that they will not be "very careful and impartial in receiving testimony," or in administering justice in a manner becoming a church judicatory. Dr. B. said the proposition was, in its terms, exceedingly objectionable. The accused said that much of it was borrowed from the Book of Discipline. The moderator read the whole of chap. 7, sec. 2, entitled "Of References," and remarked, "The accused has a right to make any proposition he pleases, but the case could not be referred until the evidence was taken." The accused said he was aware of that, but he wished that a resolution should be adopted now, that the ultimate decision should be made by the Presbytery. The moderator declared the proposition out of order. The accused then proposed that the Session should appoint a *Committee of Prosecution*, and referred to the General Rules for Judicatories, paragraph 41. He said that Dr. B. seemed to have acted hitherto as prosecutor, without any special appointment, and therefore he would not be restricted by the clause —"The members of this committee (Committee of Prosecution,) shall not be permitted to sit in judgment in the case." He referred also to chap. 6, sec. 8. The moderator decided that the proposition was not in order.]

The resolution was adopted.

AMBROSE SPENCER LUDLOW was affirmed.

Ques. by Dr. B. Were you present at the meeting of the church on the evening of the 24th Sept. last, when the church met to consider the propriety of giving the Rev. Mr. Parker a call? Ans. I was, sir. Ques. Did not Mr. T. make a formal speech in opposition to Mr. P., in which he alleged things, which, if true, would have destroyed Mr. P.'s character as a minister and a Christian in view of the public? Ans. According to my judgment it would be. Ques. Did Mr. T., in his speech, charge Mr. P. with great inconsistency in his preaching and conduct before and since his residence in New Orleans, on the subject of slavery, and did he, or did he not, found this charge on the fact of Mr. P.'s signing a declaration or recommendation to Mr. Phelps' book on slavery? Ans. He did. Ques. Did, or did not, Mr. T. endeavor to show that Mr. P., at the time of signing the recommendation in Mr. Phelps' book, entertained the sentiments therein expressed, and afterwards adopted, and maintained, opposite sentiments in New Orleans? Ans. Yes sir. Ques. Did Mr. T., in his speech before the church, characterise Mr. Parker as a weather-cock, and in substance say he would not have his children brought up under the ministry of such a man? Ans. He did, sir.

[The accused objected to the practice of putting questions on slips of paper and recording them with the answers, after the replies were given, at the leisure of the clerk, when the questions ought to be recorded before being proposed to the witness, and the answers immediately after they were made. He referred to chap. 6, sec. 10. The moderator pronounced the accused to be out of order.]

CROSS-EXAMINATION OF A. S. LUDLOW.

[As the accused was about to put a question to the witness, he was required by the moderator to reduce it to writing, and he objected, stating that he conceived it more consonant with the usual practice for the recording officer to take down the questions, and it would greatly facilitate the progress of the trial, especially as he had been deprived of the aid of the short-hand writer. The moderator decided that he must reduce all his questions to writing himself before they were propounded.]

Ques. Are you a member and an officer of the Broadway Tabernacle Church? Ans. I am a deacon. Ques. Were you present at a meeting of the church previous to the 24th Sept., of which the meeting on the 24th was an adjournment, when the qualifications of the Rev. Joel Parker for minister of the Tabernacle church were discussed? Ans. I was. Ques. Did Dr. B. nominate Mr. P. for the office of minister, and assign reasons, at length, why he should be elected? Ans. Yes, sir. Ques. Did the brethren express

their views on the subject, at the meeting of the 24th Sept., and was there a full and free discussion respecting the fitness of Mr. P? Ans. There was considerable discussion of the subject. Ques. Was the first objection adduced against Mr. P. by the accused that of a desecration of the Sabbath on the Ohio river?

[Objections were made to the question by Dr. B. The moderator requested the clerk to read from the Indictment, specification Nos. 1 and No. 2, and remarked that the phrase, "and among other slanders," in No. 1, referred to matters about which it was important to the accused that inquiry should be made. He therefore decided that the question was in order. As the accused was putting the question again he was interrupted by Dr. B. who inquired if the moderator had well considered the matter? The moderator then requested the clerk to read Specifications No. 1 and 2 again; and remarked, that if he understood the Indictment, the "other slanders" alluded to may be matter of inquiry on the part of the accused, to explain matters that are specified. Mr. Faxon said, there was no offer to prove other matters, and the accused is not charged with them. The moderator adhered to his decision that the question was in order.]

Ans. It was. Ques. Did not the accused say, that he had no unkind feeling against Mr. P., and that it was a sense of duty alone that induced him to come forward in opposition to his nomination? Ans. Yes, sir. Ques. Did not the accused say, if Mr. P. should be elected he should form no party in the church in opposition to him, but act with him so far as he conscientiously could?

Ans. I think he did.

[Ques. Have you, or have you not heard Deacon Briggs, [who was the first witness.] since the meeting of the church, Sept. 24th, censure the accused for the opposition he made to the nomination of Mr. P. and what did he say to you, or in your hearing? Opposition was made to the witness answering this question. At this time Rev. J. Parker was seen whispering to Dr. B.; and the accused asked, if it was proper for Mr. P. to whisper to members of the court? The moderator replied, that Mr. P. was deeply interested. The accused said, that was the very reason why he objected to his whispering to members of the court. "Interested in the church," said the moderator. The accused said, it was a novel affair for one so deeply interested in the case whispering to the judges, and putting questions into their ears. He then repeated the question. The moderator said, he would consider the question a minute. He then read chap. 6, sec. 2, on the Competency of Witnesses, and said to the accused, Do you mean to impeach this witness?" The accused said, By no means. Dr. B. then remarked, that the object seemed to be to try the witness. The moderator said, "It is the duty of the court to attend to all matters affecting the competency of a witness." The accused stated, that his object in putting the question was to show that he had been seriously censured by officers of the church, not one of whom had ever been to him to speak about what they deemed wrong. Mr. Faxon referred to chap. 6, to show that it was too late to challenge the witness. The moderator said, "The credibility of a witness may be affected, although he may not have been challenged. It is for the court to decide, and to change my decision if they please. Similar questions may be asked on the other side." Dr. B. said, If such a door is opened the ends of justice will be defeated. The moderator then decided that the question was out of order. Ques. Have you, or have you not, heard any member or members of the session censure the accused for the part he took at the meeting of the church, Sept. 24th, and what has been said to you, or in your hearing? The moderator said, "The question is out of order: it goes to show the incompetency of the witness." Ques. Have you not been told, or understood, that the accused was to be cited before the session, because of the anti-slavery action in the congregation? The moderator would not suffer the question to be answerd. *No part of the above appears on the record of the session.*]

Ques. Did not the accused say, that if Mr. Parker would make the same confession of breaking the Lord's day that he once required two members of his church to make, and satisfactorily explain the other matters, it would give him great satisfaction to sit under his ministry? Ans. He did.

DIRECT EXAMINATION RESUMED.

Ques. Although Mr. T. declared, that he had no unkind feelings against Mr. P., and that it was a sense of duty alone that induced him to come forward in opposition to his nomination, was not his language and manner such as to show feelings of hostility towards Mr. Parker? Ans. I think they were, sir. Ques. Did not Mr. T. say, that if Mr. P. came into the church he would leave it? Ans. I do not recollect distinctly that he said he would leave, but I inferred that he would leave from what he said. Ques. Did you understand Mr. T. to characterize Mr. Parker as a weather-cock, in consequence of his having signed the recommendation to Mr. Phelps's book, and afterwards avowing different sentiments? Ans. I understood that he used that expression in reference to that as well as to other things which he specified.

CROSS-EXAMINATION RESUMED.

Ques. Please to specify what language, and what manner, on the part of the accused, appeared to you indicative of hostility to Mr. Parker? Ans. I do not know as I can specify any particular language which he used, but I judged, from the general tone of the remarks, and the spirit manifested throughout. Ques. Did you infer hostility from the charges adduced, or from any unkindness in language or manner? Ans. I inferred it from both, sir. Ques. Then please to specify what language, and describe what manner led you to infer it. Ans. I can only say, as I said before, that Mr. T. used very strong language—

in a determined manner—and under considerable excitement, but I cannot remember the precise words. Ques. Did not the accused say, that he had no present intention of leaving the church, but should submit to a majority, and try to act as a Christian should act, if Mr. P. should be elected? Ans. I think he did, sir.

DIRECT EXAMINATION RESUMED.

Ques. by Dr. Bliss. Did not Mr. T. say, he was undecided what he should do—that he should not say what course he should adopt? Ans. I think he did, sir. The foregoing examination was read to the witness, and approved by him.

JOHN C. CRANE AFFIRMED.

Ques. by Dr. Bliss. Were you present at the church meeting on the 24th Sept. last, when the church met to consider the propriety of giving Mr. Parker a call? Ans. I was, sir. Ques. Did or did not Mr. T. make a formal speech, in opposition to Mr. P., in which he alleged things which, if true, would have destroyed Mr. P.'s ministerial and Christian character in the view of the public? Ans. According to my judgment it would, sir.—Ques. Did Mr. T. in his speech, charge Mr. P. with great inconsistency in his preaching and conduct before and since his residence in New Orleans, on the subject of slavery? and did he or did he not found this charge on the fact of Mr. P.'s having signed a declaration or recommendation published in Mr. Phelps's book on slavery. Ans. He did. [The reporter has this answer, "Yes, sir, I think he did."] Did or did not Mr. T. endeavor to show, that Mr. P. at the time of signing the recommendation in Mr. Phelps's book, entertained the sentiments therein expressed, and afterwards adopted and maintained opposite sentiments in New Orleans? Ans. Yes, sir. Ques. Did Mr. T. in his speech before the church, characterize Mr. P. as a weather-cock, and, in substance, say, he would not have his children brought up under the ministry of such a man? Ans. He did, sir.

CROSS EXAMINATION.

Ques. by the accused. Do you hold an office or offices in the congregation, and what? Ans. Treasurer. Ques. Do you, on your affirmation, positively say, that the accused applied the word weather-cock to Mr. P. in his remarks before the church, on the 24th Sept.? Ans. I do, sir.—Ques. Did you understand the accused to apply the word weather-cock to Mr. P. with reference to the alleged desecration of the Sabbath, as well as the other objections brought forward against his settlement? Ans. I did not, sir.

[The answer to the last question, as originally given by the witness, was, "I did, sir;" but, at a subsequent stage of the proceedings, the witness requested that it might be altered, because he had not understood the question. The accused objected, and said, the original answer ought to stand unaltered, and the explanation of the witness put on record in the order of proceedings. The moderator over-ruled the objection, and allowed the original record to be altered, from "I did, sir," to "I did not, sir."

Ques. Did not Mr. Hale and Dr. Bliss, in their replies to the "formal speech" of the accused, say, that the charges made against Mr. P. if true, were of small importance, and not worthy of the serious attention of the church, or words to that effect? The moderator said, "The question is irrelevant, and I do not perceive that it extends to the exculpation of the accused at all. It is wholly immaterial." The accused contended that it was a proper one for him to put. The answer would show, he believed, that Dr. B. and others, at the meeting of the church, did not consider that the accused had brought forward charges that they then deemed objectionable. Dr. B. interposed and said, he did not say any such thing as was implied in the question. The accused expressed a belief that the remark just made by Dr. B. was improper. It had the effect to prevent a witness from giving true testimony. The moderator decided, that the question should not be put. Ques. Did not Mr. Hale, in his reply to the "formal speech" of the accused, say, that the charges made against Mr. P. if true, were of small importance, and not worthy of the serious attention of the church, or words to that effect? The moderator said, he would consider whether the question was a proper one, and, after a moment's consideration, he decided it to be an irrelevant question. Ques. Did not some member of the church, in their reply to the "formal speech" of the accused, say, that the charges made against Mr. P. if true, were of small importance, and not worthy of the serious attention of the church, or words to that effect? The moderator declared that the question was an irrelevant one.]

Ques. by the accused. To what part of the remarks of the accused, on the 24th Sept., did you allude when you said, that they would have destroyed Mr. P.'s ministerial and Christian character, if true? Ans. Why, the principal was the weather-cock, I suppose, and the fact of his not preaching as he did before he went to New Orleans, and his being a different man from what he then was. Ques. Did you refer to the charge of Mr. P.'s desecration of the Lord's day, as an objection, if well founded, that would have destroyed his ministerial and Christian character? Ans. I did not, sir. Ques. Do you mean to say, that a charge against a minister of the Gospel of breaking the Lord's day, if proved, would not seriously affect his ministerial and Christian character? Ans. I do not, sir. Ques. What did you mean, then, when you said that you did not refer to an objection brought against Mr. P. that he had violated the Lord's day, as a charge that, if proved, would have destroyed his ministerial and Christian character? Ans. Because it did not occur to me at the moment. Ques. You do mean to say, then, that if it had been proved that Mr. P. violated the Lord's day, as was alleged, it would

have materially affected his ministerial and Christian character—do you not? Ans. It would depend upon circumstances. Ques. Did Dr. B. nominate Mr. P. for the office of minister, and assign reasons, at length, why he should be elected? Ans. I think he did. Ques. Were not the members of the church invited to a free discussion on the subject, and did not several of them enter into it? Ans. I do not remember that the discussion was invited; there were very few that entered into it. Ques. Did not the accused, on the 24th Sept., say a good deal about Mr. P.'s great inconsistency, in requiring members of his church, when he was a minister in this city, to make a public confession of their guilt, in having arrived here from Albany on the morning of the Sabbath, and then leaving Louisville, without necessity, on the Lord's day; and state, that if he should make a confession of the sin, and explain the other matters adduced against him, he, the accused, would be satisfied with the call, or words to that effect? Ans. He did say a great deal about Mr. P.'s inconsistency, in making two members of his church, while at Masonic Hall, make a public confession of their sin, in having arrived in the city on Sabbath morning from Albany; but it was proved, by a person present, that the accused was the cause of having that confession made, and not Mr. Parker. I do not know that the words "without necessity" were in Mr. T.'s remarks. I have no knowledge of his remarks in relation to his being satisfied if Mr. P. would make confession.

[Dr. Bliss here rose and said, that the accused had slandered Mr. Parker in the case of the Sabbath. The accused appealed to the moderator, whether such remarks were proper, as he conceived that no member of the court had a right to speak thus of the accused about matters not proved? The moderator said, "Dr. B. will be careful in his language. The accused is charged with uttering other slanders; he has a right to investigate what other slanders were uttered; he must not lie under such other things as are alluded to: if the session had not alluded to other slanders this investigation could not go on. The accused has a right to get at this fact. If he can get any other slanders out he has a right to do so, by his witnesses: Mr. P. cannot be brought into trial on that business. If Mr. T. puts it in that form I should have no doubt at all as to his right in proposing the question. I believe Mr. T. has a right to ask the question."]

Q. Did not the accused read, at the meeting, from a journal kept by him at the time, the confession which he stated the two members of the church had publicly made; and state that it was drawn up by Mr. P. after being adopted by the session?

[The witness asked the moderator if the question was in order. The accused said, he thought it was not proper for the witness to delay answering such a question. The moderator stated, that it was in order for the witness to ask his opinion as to every question asked. This question is in order.]

Ans. He did read from the journal kept by him, but do not remember that he stated that it was drawn up by Mr. P. or adopted by the session. Ques. Are you a trustee of this congregation? Ans. Yes, sir.

DIRECT EXAMINATION RESUMED.

Ques. by Dr. Bliss. Did you understand that, in characterising the Rev. Mr. P. as a weathercock, Mr. T. had particular reference to the alleged inconsistency in signing the recommendation in Mr. Phelps's book on slavery, and afterwards maintaining opposite sentiments in New Orleans. Ans. I took it from that almost altogether, as he had just been dwelling on the slavery question. Ques. Did you infer, from the accusations Mr. T. alleged against Mr. P., that he had become an apostate, if they were true? Ans. Certainly—that he had apostatized from his former professions. Ques. Did not Dr. B., after nominating Mr. P., state, that slanderous accusations against Mr. P. had been circulated in the church, and among others, those alluded to in your examination, and did he not undertake to show that they were without foundation; and after having done so, did not Mr. T. say, that Dr. B. had entirely mistaken the ground of his opposition, and that he had nothing against the private or ministerial character of Mr. P.? Ans. I do not know as the ministerial character of Mr. P. was mentioned—otherwise correct.

CROSS EXAMINATION.

[Q. by the accused. Why did you not table charges against the accused before the Session if you understood him to utter what you have alleged? The moderator said it was not a proper question.]

Q. by the accused. Did not the accused utter what you understood him to say, when you spoke of his calling Mr. P. a weathercock, near the end of his remarks? A. I believe it was immediately after the slavery question was spoken of.

[Q. Have you not been told, or understood, that the accused was to be cited before the Session because of the Anti-Slavery action in the congregation? The moderator said, "that is not a proper question, and no question shall be put or answered except with the permission of the moderator, (see ch. 6; sec. 8.) and every question must be shown to me before it is proposed to the witnesses."]

The testimony of the witness was then read to him, and he said it was correct. Mr. T. applied to Session to obtain the testimony of Mr. Phelps and Mr. Mahan. It was, on motion, Resolved that the testimony proposed to be obtained by the accused, is irrelevant. Prayer by Mr. Parker. Session adjourned.

[The accused asked for a commission to take the testimony of Rev. A.A. Phelps of Boston, and

Rev. Asa Mahan of Ohio, then in Boston. Dr. Bliss objected. The accused referred the court to the Book of Discipline ch. 6: sec. 13, "and if the accused shall desire, on his part, to take testimony at a distance for his own exculpation, he shall give notice to the judicatory of the time and place when it is proposed to take it, that a commission, as in the former case, may be appointed for the purpose." The moderator asked the accused to state the matters he expected to prove by Messrs. Phelps and Mahan, and required that he should do so. The accused stated that he expected to prove by Mr. Mahan and Mr. Phelps that Mr. Parker entertained Anti-Slavery sentiments before he went to New-Orleans, and that he expected to prove by Mr. Phelps that Mr. Parker's declaration to the accused that he had never signed the Declaration of Sentiment prefixed to Phelp's Lectures on Slavery, understandingly, was incorrect. The accused stated, further, that he expected to prove that Mr. Parker made a donation to the Anti-Slavery Society, before he went to New-Orleans, although he had forborne to mention this circumstance to the church, on the 24th Sept. as Mr. P. had made some explanations respecting it that induced him not to speak of it at that time.

Dr. Bliss said, if the accused would make an affidavit, as is done in civil courts, the Session might grant a commission. The accused replied, and said, that if all the proceedings were conducted as is done in civil courts, he should be glad; but this court conducts its proceedings very differently, for here the prosecutors, witnesses, judges, and jurors are united in the same persons. The accused said further, that he expected to prove by Mr. Mahan that he did remonstrate with Mr. P. for breaking the Sabbath, on his arrival at Cincinnati. The moderator said, "making such a declaration publicly, whether the matter be true or not, may make some difference." He said furthermore, "in my judgment the matters expected to be proved by Messrs. Mahan and Phelps are irrelevant points, but I do not wish to decide the question." Mr. Doremus said, "do I understand that Mr. Phelps has said he did not present the paper to Mr. Parker personally?" The accused stated that Mr. Phelps had not, to his knowledge, expressly said this, but it was inferred from what he had written in a letter. Dr. Bliss moved that it is the opinion of the Session that the testimony proposed to be obtained from Mr. Mahan and Mr. Phelps, is irrelevant. The motion was adopted. The accused demanded that the reasons for the decision should be recorded at length on the records of the court, and referred to the Book of Discipline, ch. 4: sec. 23, as follows—"in recording the proceedings, in cases of judicial process, the reasons for all decisions, except on questions of order, shall be recorded at length, that the record may exhibit every thing which had an influence on the judgment of the court." The Session decided that their reasons for the decision should not be recorded on their minutes. The accused asked the Session to allow him to take copies of the letters from him to Rev. Joel Parker, and Mr. P.'s letter to him, referred to in the indictment, as he lost all his correspondence in the great fire of December 1835. The moderator said it would be an improper precedent, and the Session took no other notice of the application. The accused asked permission to copy such questions and answers as were in the hands of the clerk, and had not, already, been copied by the accused, owing to the haste with which the business had been conducted. The moderator said he saw no objections. Session adjourned at half past twelve o'clock in the morning.]

SATURDAY EVENING, JAN. 12.

Session met pursuant to adjournment at the Study. Present Rev. Dr. Peters, Moderator, by request—Elders Bliss, Colton, Faxon, Joy, Doremus, Coit. Absent Mr. Pitts. Opened with prayer. Minutes of last meeting read and approved. Mr. T. being present, Session proceeded in the consideration of his case. On motion, Resolved, that it be entered on the minutes that Mr. T. made use of the following expression, "I say, that most outrageous injustice has been done me in the prosecution of the trial." It was, on motion, Resolved that it be entered on the minutes, as an evidence of the contumacious and litigious spirit of the accused that notwithstanding the Session, at the last meeting, had passed a resolution excluding a stenographer, and stated their reasons at length, the accused had stated that the man was here, and that he should not be turned out, but by force.

On motion, Resolved, that the question be put to Mr. T. whether he adheres to the determination expressed by him, of retaining the stenographer against the order of Session, to which he replied, I adhere to my determination. Wherefore, Resolved, that Mr. Lewis Tappan be, and hereby is, excluded from the Communion of the Church for CONTUMACY, till he give evidence of repentance—in refusing to submit to the order of Session, in relation to retaining a stenographer, for the purpose of taking minutes and spreading all the circumstances of the case before the public, and refusing to submit to other decisions of the Session. Passed, W. D. Coit voting in the negative, "on account of time."

Mr. T. gave notice that he should appeal from decision of Session. It was, on motion, resolved, that Session adjourn. Closed with prayer. On being reminded that minutes had not been read. Session reconsidered the motion for adjournment. On motion, resolved, a committee be appointed to prepare a minute giving reasons for the decision of Session in the case of Mr. Tappan. It was, on motion, resolved, that Dr. Bliss and Mr. Faxon be that committee. Minutes were read. It was, on motion, resolved, that Session adjourn. Closed with prayer.

W. D. Corr,
Stated Clerk.

[Such is the brief record of the extraordinary proceedings of this night by the session. The reporter entered the room early in the evening, and from the minutes taken

by the accused before he came, and subsequently by the reporter, a full account will be given of all that took place. All the elders were present but Mr. Pitts, and several of the brethren and sisters of the churchattended. Seeing JAMES G. BIRNEY, Esq. seated near the accused, Dr. Bliss asked in what character Mr. Birney appeared. The accused answered "As my friend." "As your legal adviser ?" inquired Dr. Bliss. The accused answered in the negative—and said he was fully aware that he was not entitled by the Book of Discipline to professional counsel, but Mr. B. came merely as a personal friend. Dr. B. then asked if any persons were present who were to be witnesses in the case, as they could not be present during the examination. The accused remarked that all who had not been cited to appear as witnesses could remain to witness the proceedings. They were not witnesses till they had been cited as such. The moderator said, if the accused *intended* to examine any of the persons present, they could not remain to hear any of the testimony, previous to being called to testify. The Book of Discipline debars them. He referred to ch. II : sec. 8. He then said "Those summoned are requested to retire, and afterwards the accused will be called on to name those present, whom he intends to have as witnesses. The accused said, he should not name any persons present, who had not already been cited to appear as witnesses, because, as he understood the book, persons not already cited might be present till they were. The moderator said, "If the accused does not name his witnesses he will lose the right of introducing any who are now present, as witnesses, hereafter." The accused excepted to this decision.

The presence of the short-hand writer, being noticed by some of the elders, the accused, after directing him to proceed with his note-taking, informed the court, that he had again requested the stenographer to attend. He had taken this course because he had been advised by friends, that the stenographer's expulsion was an act of gross injustice. He therefore demanded the right to have the aid of a stenographer, and to deprive him of that right was an injustice, the parallel of which had not been heard of since the days of the Star-chamber and the Inquisition. He again demanded the right to have the aid of the stenographer, and he would rather die than submit to have Christian Liberty trampled upon in his person. With regard to himself it was of little importance whether he were gibbeted and his reputation destroyed, but he would stand up for his brethren and sisters in the church. The stenographer had come there again at his request, to take a report of the proceedings, and no power on earth should exclude him but by force. The moderator interrupted the accused, who said he wanted to state the reasons why he had again employed the stenographer. Dr. Bliss interrupting said, the session had decided the question, and they did not want to hear any more on the subject. The accused resumed: He said one reason assigned for the expulsion of the stenographer was that he, the accused, wanted to make the proceedings public.—The moderator, interrupting, said, "You declared that to be your object." The accused replied that he had stated that as only one of his objects, and that he should not do that without the advice of discreet friends. Clerical assistance, he said, was necessary to enable him to make his defence, for after the expulsion of the stenographer on a former evening, he had been obliged to take the notes himself, and the consequence was that his papers had become disarranged, and he had not therefore been able to make such preparation for continuing his trial as was necessary. Besides, the Book of Discipline required that the Session should give an accused person a fair and impartial trial; but this court had excluded from the records decisions made on questions which were of great importance. If, therefore, he was deprived of the stenographer, the court above would not be able to judge, properly, of the proceedings in the court below. He required, he said, the aid of a stenographer to take the proceedings of one evening that he might be able to make better preparation for the following evening. He considered the attendance of this person to take down all the proceedings as essentially necessary to a fair trial, and that he might make a suitable defence. If he should be deprived of this aid, he would be deprived of the means of making a proper defence. There were many other reasons, he remarked, which might be given in support of his position.

But the court had undertaken to say, it was for his benefit that the Stenographer was excluded. He would take permission to say, that if he made a mistake, he should not call upon the court to bear the blame. The accused said he would ask the attention of the court to chap. 1, sec. 8, page 315. Now, if any decision took place contrary to that book, and plain and simple justice—— The moderator, interrupting, said, "I cannot listen to this argument. We have met for business, and I pronounce all the accused has said to be out of order. The minutes must first be read, and Mr. T. will please be seated for the present." After the minutes were read, the accused referred to the alteration of the record the previous meeting, in changing the answer of a witness (Mr. Crane,) from "I did," to "I did not," —in the hope the decision would be reconsidered. The moderator said, "The question is settled," and Dr. Bliss observed that they could not amend the testimony of a witness on Mr. T.'s suggestion. On Dr. B.'s motion, the minutes were approved.

The moderator said, "The Session have been informed by Mr. T. that he has invited the Stenographer to attend this evening, to carry out his original intention; and I will therefore state, for the information of the Session, my own views on the subject. In chap. 4, sec. 19, under the head "Of Actual Process," is the following: "The sentence shall be published only in the church or churches which have been offended. Or, if the offence be of small importance, and such as it shall appear most for edification not to publish, the sentence may pass only in the judicatory."

In the tenth section of the same chapter it is stated: "When an accused person, or a witness, refuses to obey a citation, he shall be cited a second time; and if he still continue to refuse, he shall be excluded from the communion of the church for contumacy, until he repent."

"From these passages it is clear to me," said

the moderator, "that the session had the right to exclude any person, or to hold their meetings under circumstances where they should be relieved from the presence of a person who came with the avowed intention of giving publicity to their proceedings, which are yet of a doubtful character, and it is not known what the ultimate result may be. The decision may be that the charges against Mr. T. are immaterial, or that the sentence ought to be published only in the session itself. It may be that it is a matter affecting only this individual church, and therefore they ought not to grant facilities, while the trial was in progress, for publication. They have a right, therefore, to require of the accused that the case proceed without the presence of the person whom they had requested to absent himself, and if the accused does not comply, they have a right to consider his offence, in that case, as if he had refused to obey the original citation. I state these sentiments and doctrines, both for the information of the session and the accused, that they may understand the situation in which they are placed. The judicatory can act upon this impression, and take measures to prevent the presence of the person objected to—not by the forcible ejection of the person who had been pleased to come into that room—but by holding their meetings, as they have the right to do, elsewhere. If the accused should persist in the course he is pursuing, they will have but one alternative in the case, that of treating him, after resistance of the orders of the court, in the language of the book, as guilty of contumacy; and when they find they cannot proceed in the investigation of the case, they may pause at that stage of its progress, and exercise the discipline of the church as for contumacy. This is an important matter for the accused to consider, for he may cut himself off from a calm and dispassionate consideration of his case, by persisting in the course adopted. Having made these remarks, I will submit the case for the consideration of the session, and exhort them to take such order as they may see fit. Mr. T. appears here with his stenographer, and avows his intention, notwithstanding the decision of the court, to carry out his original intention."

The accused begged permission to say, that chap. 4: Sec. 19, which had been read by the moderator, provided that the *sentence* should be published only in the church. Now it did not follow that the testimony was not to be published, and the other proceedings. Again, he would remark that all the provisions in the book were made for the benefit of the accused, and not of the prosecution. If *he* should make objection to publicity being given, it would be worthy of grave consideration, but it was an anomalous proceeding for the court to take up the rules which were made for the benefit of the accused, and—. The moderator interrupted and said, "I do not wish to have any long remarks on the question." The accused said they were required to give him a fair and impartial trial. The moderator said, "it is my duty to restrain you from wandering into remarks of no import." The accused protested against such interruptions, which broke the thread of his thoughts. The moderator said, "I shall not allow you to go on long in that strain." The accused said he would rather be punished for contumacy, and appeal to the presbytery, than to continue and be condemned unfairly. If he could not have a fair and impartial trial, he would say with Paul, "I appeal to Cæsar." The moderator said, "we mean to give you a fair trial." The accused said he had submitted with as much patience as he was capable of to—it was his honest opinion of the matter—the manifest and outrageous injustice which had been done him during the trial. He said it with no disrespect to the court.

The moderator inquired whether Mr. T. wished those expressions recorded. The accused replied that they would be recorded in his book—alluding to the notes of the short-hand writer Dr. Bliss moved that those expressions be recorded to shew the contumacious spirit of the accused. The accused said he did not object to any thing he had said being recorded, but he would not have it recorded in a garbled manner. The moderator said, "we have heard you and it shall be done." The clerk read the record as he had made it, omitting the words of the accused that it "was his honest opinion of the matter," and that "he said it with no disrespect to the court." The accused said he wished to have the words recorded as he had uttered them, and he added that when he was interrupted he was going on to say, that if a person should be indicted for forgery in any of our common courts, and should take a stenographer that he might have a fair and impartial statement conveyed to his children, or to the public, or to keep to guard against future slander, no court in christendom would prevent it by excluding the stenographer. No court in the world would do it, and he did not believe that such an instance could be found in any law-book that was ever published. It was common justice that an accused person should have a report of what was said against him, and would that session, he asked, deny him a privilege, the denial of which by ungodly men would be scouted by the whole community!

Dr. Bliss said those remarks were very much out of order. The accused said his design was neither more nor less than the protection of his honest fame and reputation as a man and a christian. He did not want to publish the records to obstruct the course of justice or injure the cause of religion. He did not believe a case could be cited where an accused person was prevented in this way. No precedent could be found, he believed, in the annals of civil or ecclesiastical jurisprudence, the world over,—or at least not since the settlement of this country, for it might be that such had been the case in the arbitrary proceedings of Europe, but such proceedings had been consigned to everlasting execration. The people of this country would not endure it, be they christian or unchristian, and he would say if he were denied that right, any decision to which the session might come would derive no force from its own inherent justice, would not meet with the approbation of the public, nor the approval of the Great Head of the Church.

The moderator again reminded the session and the accused that the sentence was to be published only in the church, or if the offence were small in the judicatory. "Of course," said he, "if they have that responsibility respecting the ultimate sen-

sonce, they must take care not to deprive themtelves of the ability to prevent a wider publicity. Now in the case before you, the accused has declared most unequivocally that the stenographer is here for the purpose of publicity"—The accused said he had declared that the report was to be published if he chose, which he had a right to do. The moderator, addressing the accused, said, "Please to be silent, Sir ;" and then, addressing the session, continued, "Mr. T. has declared very unequivocally that he has brought a stenographer here to spread every thing that passes before the public ; and the session has decided that it is not expedient, in a prosecution before a primary court, to give such publicity. My impressions are justified by what I have read, and the session ought to hold in their own hands the power to prevent publicity till the proceedings are finished. I accord with Mr. Tappan in some of his suggestions, but not that all the statutory provisions were made for the special benefit of the accused. It was intended that they should be lenient to accused persons, but the great interests of religion are to be guarded. The statutes are of no party bearing, but were intended to guide them in dealing out even-handed justice to all parties in prosecutions of this kind. No party can claim the exclusive benefit of the statutes, but all are entitled to the benefit, to share and share alike. With reference to the privileges and rights of the church, in such a prosecution as this, the session have the right to withdraw if the stenographer chooses to remain, or they may proceed if they please."

The accused said he would not yield that right ; they might send him where they pleased, or treat him as they pleased. The moderator said, "I beg the session would take notice of Mr. T.'s declaration." The accused repeated that he claimed the right, and the stenographer should remain there as long as he did. That resolve was based on the advice of discreet friends. He had not resolved in his own mind what he should do with the report ; he would only state that in the first place he required it to enable him during the progress of the trial to prepare to make his defence, and then to enable him to present the whole to a higher court, if an appeal should be made. He would also say that he claimed the right to publish it if he pleased, if he could do it ; he did not know that he had the right, and he should not do it till he had advised with some of the fathers of the church on the subject ; but with their advice he should make such publicity as he pleased. The moderator cautioned the accused, saying, "you may have your remarks adjudged contumacious, and you may be cut off from a trial." The accused replied that he knew who his judges were, and that— A member of the session interrupted him by rising to propose a resolution that Mr. T.'s declaration that the stenographer should not be ejected but by force should be recorded. It was carried. Dr. Bliss then moved that the question be put to the accused, whether he persisted in his determination, against the decision of the session, to retain the stenographer. The motion was seconded and carried. The moderator then said, "Mr. T. you have heard the question." The accused replied in the affirmative, and said that if they wanted his reply he was prepared to make it, but in friendship to the members of that session, before they came to an ultimate decision, he would state the authority he had, that they might be careful before they fell into the pit they were digging for others. He had consulted Dr. Beman, who told him, night before last, that on a trial in the church of which he was pastor, two short-hand writers, who were not even professors of religion, were permitted to attend, and that it was not in the power of the session to exclude them. His stenographer was a member of the Methodist church, and skilful in his profession. Dr. Beman had told him that it was a most outrageous— The moderator said, "you are out of order, and we cannot hear you." The accused remarked, that he would then at once state that the short-hand writer should not leave till he went. Dr. B. moved that Mr. T.'s answer be recorded. Carried. Dr. B. then moved that the accused be excluded from the communion of the church for contumacy, till he gave evidence of repentance.

The accused said, "Sir, it is a small matter" — The moderator said, "please be silent, Sir, for the present." He then asked if the motion was seconded. It was seconded, and the accused continued, "It was a small matter with him to be judged of man. He appealed to God. They might cut him off from the communion of the church, but it would be a more difficult matter to cut him off from the church of Jesus Christ. Both he and the moderator would have to appear at the bar of God to give an account of the deeds done in the body, and if the decision of that court was not reversed on earth it would be in heaven. He stood there to be tried on charges that were never intended to be brought against him. It was an Anti-Slavery charge for which it was intended to try him, and this was an after-thought." Dr. B. said Mr. T. was out of order. The accused continued : "If it had been intended to try him on these charges, why was the matter permitted to slumber from the 24th Sept. to Dec. 18th,—two days after an Anti-Slavery movement in the church ? Then he was cited without the charges being specified, and when he appeared before the session they adduced specifications that were never dreamed of previously. He was prepared to prove it— and that this session held him to trial on charges that they never dreamed of till after he was cited. It was, as he had said, an after-thought, and it could be proved by members of the church. Why was not David Hale cited there ? They durst not bring him. He and other brethren had told them that they were trying him, the accused, unjustly, and that the session had altered their minds after being told that if they proceeded as they had originally intended they would be defeated. The members of the session knew that fact ; Mr. Parker knew it ; he charged it on him, and on the members of the court. Dr. Bliss said he hoped—— The accused said he had been treated in a most unrighteous and wicked manner. Dr. B. hoped these words would be recorded. The accused said he hoped they would. They *should* be recorded. He spoke with some emotion, but he would not be trampled upon. The moderator inquired whether Mr. T. was speaking to the court. The accused replied that he was speaking of matters that he could prove. Mr. Parker had told him in that

room they found they must stop him at any rate; that some had proposed one way, and some another; and they had brought charges at last that could most conveniently be proved. Mr. Parker said he denied the truth of the statement. The accused remarked that Mr. P. had before stated that he had uttered what was not true —— The moderator said, "I hear you now through courtesy; you are injuring your position." The accused said he did not think he was. He had been treated unkindly, and by those who sat there with an apparent predetermination to convict him. They had acted manifestly against the Book of Discipline, and he should appeal to the Presbytery. That case was not to be shed up there, for the question decided against .. would be reserved in the court above. Dr. Beman had told him that the points decided against him were against the Book of Discipline, and he, the accused, should have the pleasure of having that gentleman as his counsel at the higher tribunal, if God spared his life.

Dr. Bliss said he supposed that remark was addressed, not to the court, but to others The accused said, brother Bliss had no right to impeach his motives. The moderator said, "What! not in these remarks!" The accused said he was only speaking of things that he could prove, and if his witnesses were not excluded he should make it a matter of record. If he were guilty he would say with Paul, "I refuse not to die——" "Why then did you interrupt the proceedings?" inquired the moderator. The accused said, if he could not have the proceedings recorded he preferred it—it was matter of choice. He would rather die than let a garbled account of the proceedings go forth. Let every thing that takes place here go forth; he was not afraid—*he* was not unwilling, and why should the court be afraid to let the whole world know their proceedings? The moderator replied, "because the Book of Discipline says so, and it is sometimes best not to let scandals go abroad respecting the church" The moderator again read the clause respecting the publishing of a sentence. The accused proceeded: Suppose he was unfairly condemned—suppose he was disgraced by that session, and cut off from the church, might he not publish that! The moderator replied "yes." Why, then, said the accused, should the court be more tender of his reputation than he was himself! He denied that the clause read by the moderator prevented his giving publicity to the proceedings. The moderator said, "there is no civil arm to prevent you, but if you do this you proceed on your own responsibility, and must answer for it to the church."

The accused said there was no authority in the book for the moderator's decisions, and he would hold the session to the Book. He belonged to a Presbyterian church, and he claimed to be judged by its constitution. He called to their minds the principles of that church which they were violating, and if he could not be convicted and condemned by them let him go free. If they condemned him under that Book he refused not to acknowledge their power, nor to submit to the punishment they might decree against him on conviction. If he was unfairly convicted he should appeal. Show him that he had slandered Mr. Parker, and he would acknowledge his offence before the congregation in the Tabernacle, if they pleased, but he would not let the weight of a feather rest upon him if he felt himself free from blame. And he begged to warn the court that they must meet him at another tribunal. The community would pronounce on the subject in controversy, and on the attempt to put down a man who had been among the earliest members of that church—one of the oldest elders—one who had been an old friend of the minister—who had invited him to the city—a minister whom he brought there with all his heart. Did the brethren think that they were to go on in that way? If they did they would meet with a severe rebuke from an honest, high-minded community.

could not think that they would; he could bear to think that the members composing that court would justify their proceedings; he could not believe it—and if they persisted he was sure they would be covered with shame and confusion. He had not been treated fairly. Dr. B. had acted against him as prosecutor, in a style, evincing a desire to have him condemned, exceeding that of a public prosecutor.

The moderater said, "I shall not allow such remarks; I will not allow any personal reflections." The accused continued; Dr. B. had acted as prosecutor as had been mentioned, and he had done contrary to the spirit of the book that provided that a committee of prosecution should be appointed. The moderator said, "I dissent from that: the book only provides that it may be done." The accused said Dr. B. had in fact been the prosecutor without coming under the restriction of the book, in that case. Dr. B. was there as a witness, prosecuter, judge and juror; and he consented to be there in those capacities. The moderator said "cease those remarks. I will not hear you any longer. If you have any thing to say on the case you may proceed, but you shall not reflect on individuals." The accused said he was stating mere matters of fact. The moderator said "you must be seated if it is your object to repeat those facts. I wish to treat you with all kindness." The accused said Dr. B. could not deny his statement. The moderator said "I deny that Dr. B. is the prosecutor." The accused said he could not see what ground of offence—The moderator again interposed and said "I will not allow Mr. T. to assail any individual member of the court." The accused said he did not intend to do so, nor did he state any thing but acknowledged truth. Dr. B. was there in various capacities—he should state matters of fact.—The moderator said, "will you be seated after I have told you twice!" The accused desired to state the motives that had induced him to make the remarks. A person who acted there as prosecutor had no right to set as a judge. There was a manifest impropriety in it. A man of delicate feelings would not appear as prosecutor and judge; even if he were permitted to do so, not one in a thousand would do it. Now if a man did thus—if he acted as prosecutor—he was disqualified from acting as a judge in the case. He should not want the District Attorney, after conducting a prosecution against him, to act as his judge. The moderator asked Mr. T. if he meant to treat the court with any respect. "If" said he, "you continue to speak so after being told that you should not, I will not hear you." The accused said he

wished to make his meaning plainly understood. The moderator asked, "do you mean to repeat it again?"

The accused said he had been asked why he brought the stenographer there, when the alteration of the records, at their last meeting, showed the necessity of it. This alteration he had discovered that evening, when the minutes were read: the answer of one of the witnesses [Mr. Crane] had been altered after he had made it. The moderator said "you did not find this out to-night, for you knew it at the last meeting. You must if you please, cease making such remarks." The accused said he did not know *how* the alteration had been made till that evening. The moderator said, "be seated, sir,—so far as those remarks—be seated, sir." The accused said he would set down in obedience to the command of the moderator.

The moderator went on to say that "the statements made are entirely incorrect. Mr. T. was present, and knew that the alteration had been made." The accused said he had taken that night the only opportunity he had had, to see how the alteration was made. He knew before that an alteration had been made, but he did not know how it had been done. The moderator said, "it was done, and Mr. T. knew it." The accused repeated that he had not known the manner in which it was done, and he appealed to the clerk whether he had not obtained an examination of the record for the first time that night. The clerk admitted that he had shown the book to the accused. Mr. Crane (the witness) explained, and said that when he gave the answer in question he had misunderstood the inquiry. The accused said he had made no objection to the answer being corrected, but he claimed to have the correction made in the order of proceedings. The original answer ought to remain, and the correction appear afterwards when it had been suggested by the witness, instead of the court making an erasure on their record. He held that he was right in his view of the case, and when he heard the minutes read that night he thought it was a fit opportunity to mention the matter. The answer should stand as it was first given, and the correction appear afterwards. The moderator said, "Well, it stands there, and it is of no use to say any thing more about it." The accused said it stands there certainly, and he supposed it would till the presbytery reversed it.

The moderator said, "The question before the session is, if I understand it, that Mr. T. be excluded from the communion of the church on the ground of contumacy. I have listened through the course of Mr. T.'s long remarks because I wished him to avoid the undesirable result, and was in hopes that he would endeavor to impress upon the court that he had no design to arrest the order of proceedings that is marked out for them by the provisions of the book. The session ought, however, to be reminded that they are approaching a solemn and interesting decision. The subject is still open for remark to any member of the session if there was anything to be said before the question was put. Dr. B. will please reduce the motion to writing." While Dr. B. was doing this the accused said he had been asked at the beginning of the evening if Mr. Birney came there as his professional counsel, to assist him in making his defence, and he had answered in the negative, being aware that he was not entitled to professional counsel. Mr. Birney however had been an elder in the Presbyterian church, and he, the accused, had consulted him and Dr. Beman on the matter before the court. He therefore solemnly and affectionately warned the session not to proceed hastily. He warned Dr. Bliss, and he warned the moderator as a minister of the gospel. He warned them as ministers and professors of religion how they proceeded. He was under no personal apprehension about the case himself, but he did regard the dignity of the christian character, and he did not wish to see it disgraced in the person of his old friend Parker, the moderator, or any of the brethren of the session. He solemnly warned them, and assured them that he acted under the advice to which he had alluded, and which justified his course of proceeding. All he wanted was a fair and impartial trial, and he wished them all to understand it, and that he desired only a true record of the proceedings. If he were denied that he would not submit to be tried by that tribunal. There was no contumacy in the matter, for he spoke with perfect respect towards every member of the court. He would be tried by the Book of Discipline, and when the session travelled out of it he believed they were mistaken in judgment, and were, without knowing it, committing flagrant injustice towards the accused. It was safe in him to predict that it would be made so to appear. He had no angry feelings at all, though he had been placed in very trying circumstances since he came there. He came the other night, with the stenographer, who was ordered out of the room, and he, the accused, was compelled to proceed to a late hour one night without clerical assistance. The next day he was much occupied with business, had been unable to arrange his notes as he desired, and when he had learned that the expulsion of the stenographer was contrary to the Book of Discipline he could not longer submit to it. He would rather be cut off from the church than submit to outrages of that kind, for he had never yet yielded a principle that he deemed right when opposed by arbitrary power, and he hoped he never should do it. Show him any mistake he had committed, and he would acknowledge it, but he would stand up for his rights—he would not—he could not yield them. He should be unworthy the name of a christian and of a man if he submitted. If a christian court was not to be conducted in a fair and impartial manner, what reputation would such a court have in the world! Why had not ecclesiastical courts the same respect that civil courts have! Why had they not the same authority with the community! What influence could they have if they violated every principle of right, of justice, and the spirit of the gospel of Christ! He could not suppose that court would do it, but if they did what influence could they expect! Brother Parker knew there was no unkindness in his heart towards him; there was none towards the moderator. When Mr. Parker preached well he endeavored to profit by it, to pray over it; and when it was otherwise he aimed to profit by what was good while he threw the rest away.

Dr. Bliss then rose to read his resolution. After

he had finished, the accused said he had one proposition to make before that resolution should pass, and he made it more out of regard to the court than from personal considerations. Mr. Birney, as had been stated, had been an elder in the church, and it might be useful to hear some remarks from him on the subject. The session could hear him if they pleased; he did not request it; and perhaps Mr. Birney was unwilling to speak if it were desired. The moderator said, "no professional counsel can appear here to plead." The accused said, if he spoke, it would not be as professional counsel, but as an elder of the church. The moderator said "if an accused person felt unable to conduct his defence, he might request an elder, who was a member of the judicatory, to assist him. I will decide when I know what Mr. T's. request is." The accused said he did not feel incompetent to plead his own cause, and he did not ask them to hear Mr. Birney; he only suggested it as he was a disinterested man, and a man of character, whose views on the subject would be worth considering before they proceeded to acts of that kind. He did not, he repeated, request it, but he made the suggestion that the session might, if they pleased, avail themselves of the opportunity, to hear his opinion in the case. Mr. Birney did not ask leave to speak, and would rather not do it.

The moderator asked Dr. Bliss to read his resolution, which he did. The accused said the subject was not fairly stated, and he wondered why they sought to give it a false light. Could they not, in stating his reason, give the true one? He said he had required the aid of the stenographer to enable him, in the first place, to make his defence; in the next place, he required his aid for the protection of his character, and to prevent a partial account of the doings of the court, going up to the court above; and at the same time he was free to state, that the minutes being his own property, he claimed the right to publish them if he thought proper, and should be advised to it by fathers in the church. He claimed the right to do it, but he made no announcement at all that he was determined on doing it. The moderator observed, "Mr. T. does not deny that he said so, at the commencement." The accused said he had stated among other things, that he had the right to do it. He did not know but he had a right to do it in one of the penny newspapers, or in the Journal of Commerce, but he should not do it without the advice of fathers in the church. If they advised him that justice and the promotion of religion required it, and that it would do good, he would do it, but not without. The report was his property, but he would not publish it unadvisedly, nor as a matter of temper. He repeated that his object had been to have a full view of the proceedings to enable him to make a suitable defence, to give the Presbytery a full view of the case, should it go up, and to publish if it were necessary. Now he would tell them freely what he intended to do. When he found that questions which he put to the witnesses were decided by the moderator to be out of order, and were not allowed to be placed on the minutes, by reason of which great injustice had been done him—The moderator, interrupting, said, "I never decided that they should not go on to the records." The accused said the stenographer's book would show it. The moderator said, "I deny it if a thousand such books said it. They were all put in writing in every instance." The accused said he claimed that they should be put on the record. The moderator said "you cannot." The accused said he did not want to contradict the moderator, but (pointing to the short-hand writer's note book) "what is written is written." He continued. He was stating, when he was interrupted, one of his reasons for desiring that the whole case might go up to the presbytery. If they condemned him there, he would not submit to the slightest punishment—not even the weight of a feather—but would appeal. When he found that the whole proceedings were not to go upon the record, he had found it necessary to preserve the records himself, and his intention was to have them printed in a pamphlet, and to present each member of the presbytery with a copy, that they might understand the case. The moderator said, "you declared that you would publish the case at the very commencement." The accused said yes, if he saw fit he should. Dr. B. said the inconsistency of the declaration was perfectly apparent. The stenographer was brought there before the trial commenced, and it was stated that he was brought there to take down the whole proceedings that they might be spread before the public; and now it was stated that the stenographer was brought there when it was found that the moderator decided to overrule certain questions put to the witnesses, a circumstance which had not taken place till the trial had commenced. The accused stated that he had assigned a reason for continuing the stenographer. He had given other reasons why he was brought there, and that as the reason why he was brought back.

As Mr. T. was speaking, Mr. Birney occasionally either whispered to him, or handed him memoranda. The moderator now said "I regard this interference as out of order. Mr. Birney is a professional man, and his attendance therefore cannot be allowed." Mr. Birney, with some surprise, asked whether no person was to give Mr. T. any friendly intimation. He appeared there as a friend merely, and was not a practising lawyer. The moderator said, "your attendance, as you have represented, is merely avoiding the provisions of the book." Mr. B. asked the moderator to read the clause in the book. The moderator read the passage referred to, when Mr. B. asked if he had "pleaded." The moderator said "the effect is the same if you write speeches for Mr. T." Mr. B. asked if the moderator had read what he had put before Mr. T.? The moderator replied in the negative. Mr. B. asked how then he could tell what he had written? The moderator replied "I have seen you suggest to Mr. T." Mr. B. said, what!—had no person a right to suggest to the accused? If no person had a right, of course he had not. The moderator observed, "my opinion is that an interference of that kind is a violation of the rules." Mr. B. replied, then the moderator prevented him saying a word to the accused! The moderator replied in the negative. Mr. B. continued: he had not appeared and "pleaded," which would make him liable to objection. The accused said the moderator was at liberty to read Mr. B's

suggestions if he pleased, and to place them on the record. The moderator terminated the conversation by calling on Dr. Bliss once more to read his resolution. Dr. B. again complied. The accused rose and said he would move that it should be stated in the resolution that his continuacy consisted in retaining the stenographer for the protection of his own character.—The moderator, interrupting, said, "you cannot move." The accused said he would "suggest" that addition. The moderator, without listening to the suggestion further, asked the session if they heard the resolution. Mr. Coit (the clerk) proposed that the consideration of the resolution be deferred till the next meeting, but his motion was not seconded. Dr. Bliss said he did not see that any object would be answered by postponement. The accused came there doubtless, with his mind made up to take the consequences. If it were a hasty decision, he would himself move a postponement, but the accused had said that he had taken advice on the subject, and therefore he supposed he had fully made up his mind. It was a painful course to his mind that he was compelled to take in that business; it was one that had caused him more pain than any other incident of his life. But Providence had placed him in circumstances to act in that case, and had laid responsibilities upon him which he must discharge. He had not only to meet them there, but he should meet them at the judgment bar also, and therefore he felt his responsibility. If the accused had not come there with his mind made up, he should prefer postponement, but he supposed a postponement would not alter the result.

The moderator said the motion for postponement was not seconded. He then proceeded to put Dr. Bliss' original motion, which was carried with one dissentient (Mr. Coit) on "the ground of time." The accused said he should like to have the *other matters* referred to in the last clause of the resolution specified. No answer was given, and the moderator proceeded to address the accused.—"It may appear at a future time different to Mr. T from what it does now—for refusing to submit calmly to that tribunal, and to be tried by those with whom he had co-operated in former times. And it may not be out of place to urge upon you the solemn importance of reviewing your position in the matter with calmness and much prayer to God for direction, for it is a very unhappy thing that you should have hastened an investigation of this kind to a close by not yielding to the direction of the Book of Discipline. Your remedy, if you feel aggrieved, and wronged by the decision of the session, will be an appeal to the Presbytery; for the decisions of all the courts, it was admitted, were fallible, and your ultimate consolation, if you are honest before God, is in committing your ways to Him to direct your path. This was by no means an ultimate decision, for it may, if wrong, be reversed. That you understand, but still notwithstanding all that, it is a solemn matter to have differences of this kind among brethren, and you ought to suspect yourself to be wrong if you find yourself thus."

The accused said that he did not think it right that he should suspect himself to be wrong when in the discharge of his duty; and he would take the liberty to say a word to the moderator. He, the moderator, presided over the meeting of the church, when a call was given to Rev. Joel Parker. He then heard the accused for an hour and a half, in his address to the church on that occasion, and if the speech which is said to be the foundation of all these specifications, was wrong, and the speaker had slandered Mr. Parker, it was the duty of the moderator to have called him to order. But he did not call him to order. On the contrary, at the close of the meeting, in prayer to Almighty God, he offered thanks for the good feeling that had prevailed at the meeting, the Christian spirit that had been evinced, while he committed the church and the pastor elect to the keeping of the Saviour. Now, said the accused, if he had been guilty of slandering Mr. Parker on that occasion, would the moderator, before the church, have thanked God for what had been said?—The accused said he would put it to the conscience of the moderator, why, if he had dreamed that he had been slandering Mr. Parker, when he went away from that meeting, arm in arm with the accused, in pleasant and agreeable conversation, he did not allude to his offence? He asked the moderator, if, as a master in Israel, it had not been his duty to expostulate with and rebuke him if he had violated the laws of God by bearing false witness against a minister of the gospel? And if his brother Bliss, who was a judge there, had thought that the accused had slandered Mr. Parker, would he have called upon the accused, at prayer meetings subsequently, to lead in prayer? Dr. Bliss asked if he had not rebuked the accused? The accused replied in the affirmative, and said, did not Dr. B. also compliment him on the frank and open manner in which he had conducted himself; did he not say at the close of the meeting of the 24th Sept. that the accused was an honorable foe? The accused said he held that his brother Parker had not contemplated citing him till he had come out in Anti-Slavery action in the Tabernacle, and taken measures to form an Anti-Slavery Society. It was then that Mr. P. said he must be stopt at any rate. The accusations in the indictment were an after-thought.

Mr. Parker said that he had not said so, and he had a letter from Mr. T. which showed he was appised that the session had talked about it. The accused said he was happy to be reminded of that letter. He had been informed that Mr. P. laid the matter before his brethren at a ministers' meeting, and asked their opinion whether a prosecution had best be instituted against the accused for what he had said at the meeting of the church on the 24th Sept.; and the ministers had, by a large majority, said NO. It was a matter of conversation in the city, and at a meeting of the session subsequently, the members had been told these facts. Mr. Parker said, Mr. T. just now had said, they had not thought of citing him for what he had said at the church meeting. The accused replied it had not been thought of by the session; it was at the ministers' meeting that the subject had been discussed, after being introduced by Mr. P. himself. Now, by the Book of Discipline, the session were bound to take "immediate cognizance" of the offences of a member. Why then had they permitted the alleged offences of the accused to slumber from the 24th Sept. to the 18th Decem-

ber? In Philadelphia, Lord's day, Dec. 16th, the minister of one of the Presbyterian churches had invited the church to remain after the service, and publicly denounced the Anti-Slavery movements, as was done in the Tabernacle on the same day. The session also, in Philadelphia, had cited a brother, who was active in the cause, to appear before them on the 8th January, the same day for which the accused here was cited! There was a coincidence both of dates and offences, and who would believe that it was not a concerted matter?

Mr. Coit (clerk of session) said that in conversation that day, Mr. T. had said he considered it an accidental circumstance, and did not believe there had been an understanding on the subject between the minister in Philadelphia and Mr. Parker. The accused replied that since the conversation alluded to, a gentleman from Philadelphia had said that he had reason to believe there was an understanding between some of the ministers in Philadelphia and New-York to put abolition down in their churches. Mr. Parker said it was the first time he had heard of it. And he added that when he signed the Declaration in Mr. Phelps's book, he expressly provided that he should not pledge himself to abolition,* and Mr. T. had promised not to publish it because he would not hurt his reputation. The accused asked if he had not said he would not publish it to hurt his reputation at New Orleans? Mr. Parker said no, but that he would not hurt his feelings. Then he came and said that he Mr. P. had signed the Book without having made any reservation on the subject of Slavery. There was another thing, said Mr. Parker, the accused had declared that he was "the murderer of Lovejoy." The accused said he had never uttered those words.

Mr. Parker continued: he had hoped, after the thing was done, as Mr. T. had shown some kindness of feeling, that he would continue to be kind, and that all would be forgotten; but Mr. T. had asked why the session had not included in the specifications the declarations of the accused with regard to his alleged desecration of the Sabbath. He would give the reason. It was because many of the witnesses were absent, and because they had documentary evidence to prove the falsehoods of the accused. The accused desired Mr. P. not to accuse him of falsehoods. Mr. P. replied that Mr. T. had charged him with falsehoods before three hundred people, and had said that he was the murderer of his brother Lovejoy. The accused denied that he had ever done either. Dr. Bliss said the accused used precisely those terms in alluding to the death of Mr. Lovejoy. Mr. P. said that when he arrived at Cincinnati, Rev. Mr. Mahan had rebuked him for travelling on the Sabbath, and he had justified himself. He then proceeded to state some of the facts in that case. He, and several members of his church, had their baggage on board the steamboat at Louisville, and when the captain had resolved on leaving on Sabbath afternoon, they thought it would be a greater breach of the Sabbath to remove their baggage to a public house than for them quietly to proceed up the river.

After some further conversation, the accused asked the moderator how he came to walk with him, arm in arm, from the meeting of the church on the 24th Sept. if he had at that meeting slandered brother Parker? Was he not bound to reprove him, and not to thank God for what had been said? He should like to have the moderator's explanation, that it might be recorded on the stenographer's note book. After a long pause, the moderator inquired whether the session was ready to go through with their business. Dr. B. replied in the affirmative. The moderator then said, addressing the accused, "I would remark that I always intended to treat you kindly, and shall to-night." The accused said that if the moderator heard him slander a brother in the ministry, he ought not to neglect rebuking him, rather than to treat him kindly. The bible instructed them not in any wise to neglect rebuking a brother that sinned. But the truth was, the moderator did not believe that the accused had committed sin in the matter. The moderator said "it is hardly worth while to protract the discussion; I have only to repeat that I hope Mr. T. will think upon this matter, for he feared he ought to suspect himself wrong when he found it expedient to oppose a trial of this kind. I will commend him to God and the word of his grace. He has placed himself in an unpleasant attitude."

The accused asked the moderator whether he had ever known a stenographer excluded from a court, and he would also ask him his authority for such a step. The moderator said, "after the close of the session you may ask such questions." The accused said he would then ask for a reply. It was then moved and seconded, that the session adjourn without day. The accused said he appealed to the Third Presbytery. Mr. P. said that Mr. T. could give notice of appeal in writing, within ten days. The accused said he should do that, but he wished to make a verbal declaration at this time. He, then, (addressing the moderator) said that at the opening the last meeting of the session, the moderator had intimated in his prayer, that he thought the accused would be condemned. The moderator hoped Mr. T. would not imagine that he had been unkind to him. The question on the adjournment was then put and carried.

The accused, full of distress at the cruel and tyrannical treatment he had received, and shocked at the attempt made to gloss it over with the forms of religion and expressions of piety, rose with his friends to leave the room, when the moderator said, "Mr. T. will you remain and unite with us in prayer?" The accused felt unwilling to refuse, and yet he thought it would be a solemn mockery to kneel and listen to a prayer to be offered by one who had, as he believed, with the session, trampled upon the constitution of the Presbyterian church, and the rights of an individual. He, therefore, in a respectful manner, said he would remain, but he hoped the moderator would call on Mr. Birney to close the meeting with prayer. The moderator however prayed himself, and the accused followed him.

It having been suggested that the session had closed its meeting irregularly, inasmuch as their minutes had not been read over previous to the adjournment, the accused stated the fact, and that

*See the Declaration signed by Mr. Parker on a previous page.

the Rev. La Roy Sunderland, who was present, was witness to the fact, as it might vitiate all their proceedings. The moderator said "the meeting can be constituted again for that purpose, if we please." The clerk, it appeared, had not recorded that the session had adjourned. The accused asked the clerk whether there had not been a vote taken that the session adjourn, and he replied, hesitatingly, "I think there was." The moderator said, "to avoid impropriety the meeting had better be constituted again, to reconsider the subject." This was moved, seconded and carried, when the accused, with a large number of persons withdrew.*

TESTIMONY OF REV. ASA MAHAN.

This testimony was taken, March 2, 1839, in the Study of Broadway Tabernacle, by consent of parties, as President Mahan was on his way from Boston to Oberlin Institute, Ohio. Ques. by Lewis Tappan. How long have you been acquainted with Rev. Joel Parker, and have you corresponded and been on terms of intimacy with him? Ans. I have been acquainted with him from 1821 or 1822 —have been intimate with him ever since—and have frequently corresponded with him. Ques. Did Mr. Parker formerly take high ground on the subject of promoting the observance of the Christian Sabbath?† Ans. Yes, Sir,—he did—he was one of the individuals that took high ground in the early efforts that were made for the better observance of the Christian Sabbath. This was about the time of the formation of the General Union for Promoting the Observance of the Christian Sabbath. Ques. Did you converse with Mr. Parker, soon after his arrival at Cincinnati, from Louisville, about three years since, and did you remonstrate with him for his conduct in travelling on the Sabbath —if yea, please state the substance of your conversation. Ans. I did converse with Mr. Parker at that time, and did remonstrate with him. Mr. P. arrived at Cincinnati Monday morning. When I met him, I asked him from whence he had come. He informed me from Louisville I think. I then asked him when he left there. He told me the previous afternoon. I expressed my surprise at at the time. Subsequently the subject was introduced again. Brother P. asked me what I should have done under similar circumstances. I told him that I should not have done it myself. That is the substance of the conversation that occurred at the time. Ques. Did, or did not, Mr. Parker give you at the time the particulars of his leaving Louisville on the Sabbath, and did, or did you not, in view of all the facts, as related to you by him, disapprove of his conduct as contrary to the law of God, and calculated to make Christians feel grieved that he had set such an evil example? Ans. Yes, sir. It was after the statement of facts in the above answer that I stated that J would not have done it. Ques. Did or did not, Mr. Parker, after your remonstrating with him, profess repentance of his conduct on the ground of his having committed a moral offence? —Ans. The reply of Mr. Parker, after I had stated what my feelings were, was something like this, that he would not do it himself again. Ques. Have you subsequently written to Mr. Parker, respecting his travelling on the Sabbath, and reminded him of the inconsistency between his conduct, on this and other subjects, and his former professions and acts—and if you have, please state the substance of what you have written to him. Ans. I wrote a letter to Mr. Parker two years ago not far from this time, in which letter I noticed his travelling on the Sabbath as evidence that he had declined in piety. I think that in that letter—it may have been in the conversation however —that I reminded Mr. P. of the stand which he had formerly taken in reference to the observance of the Christian Sabbath, and the inconsistency of his conduct on that occasion, and his former professions and acts. Ques. Did you ever acquaint Mr. Parker with your having informed L. Tappan that you remonstrated with him at Cincinnati for his conductd intravelling on the Sabbath? Ans. I think I did last fall when Mr. Parker was in Oberlin. My impression is not very distinct on that subject. Ques. Did you ever inform L. Tappan of your remonstrating with Mr. Parker? Ans. Yes, Sir. Ques. Did you have an interview with Mr Parker at Oberlin, Ohio, last fall, in respect to his travelling on the Sabbath about three years since,* and did he blame you for writing to him about the inconsistency between his conduct in travelling on the Sabbath, and his former professions and acts, when he had professed repentance at the time you remonstrated with him at Cincinnati? Ans. He expostulated with me because I had written to him on that subject after the declaration he had made of his feelings at Cincinnati in respect to travelling on the Sabbath. Ques. Did or did not, Mr. Parker, at your interview with him at Oberlin last fall, state distinctly that he only regretted travelling on the Sabbath between Louisville and Cincinnati on the ground of *expediency?* Ans. He did. Ques. Did you have an interview

* It would doubtless have been more conformable to ecclesiastical law for the accused to have been entirely passive, after the arbitrary act of the session, in excluding the short-hand writer, and to have noted down all the irregularities of the court, for the purpose of carrying the case to the higher court by complaint and appeal at the termination of the trial before the session. He had reason to believe, however, that only a garbled account of the proceedings would go upon the record of the session, and consequently that the Presbytery would not have a full view of the whole case should the stenographer omit to take notes. He was also inexperienced in the proceedings of ecclesiastical courts, though he had been for many years an elder in the Presbyterian church. In the preceding report of the trial there is some repetition and extraneous matter, but it has been deemed best to publish all that took place, with the exception of some preliminary matter near the commencement of the first evening. So far as the accused appears to have exhibited any wrong spirit, or to have used any unbecoming language, he would sincerely regret it, and his only apology is, he felt that attempts were made throughout the trial to goad, circumvent and oppress him by a court, some of whom at least, had, as he believed, virtually resolved on his condemnation. The facts disclosed will, it is thought, bear out this supposition, while they afford melancholy evidence of the lengths to which even reputed good men will go, in using power to oppress those who stand in the way of their sins, and the danger there is that the power vested by the Presbyterian church, in her judicatories, may be used to harrass, oppress and overwhelm its members, unless it is administered by enlightened and holy men, who constantly aim at promoting God's glory instead of building up their own ambitious schemes, and devising plans of carnal policy for the circumvention and destruction of obnoxious individuals.

† Before the answer was given, Dr. Bliss introduced a Resolution that the question is irrelevant, but it was decided that it might be put.

* In the cross examination, Mr. Mahan corrected himself *as to the time* which was longer ago than three years.

with Mr. Parker and Dr. Bliss in the city of New York last fall, in which one or both of those gentlemen endeavored to show that L. Tappan had misrepresented what you had told him, in stating that you accused Mr. Parker of inconsistency between his travelling on the Sabbath and his former acts and professions, at Cincinnati instead of Oberlin, and did you not say to them that probably you had led L. Tappan into some error by not being sufficiently careful to discriminate as to time, so that there had been no misrepresentation on his part in the matter? Ans. I suppose that I led Mr. Tappan into an error in consequence of my not discriminating as I should have done in respect to the time when the particular conversations were held—had I been aware that the time was at all material. Ques. Could not Mr. Parker, and the members of his church who arrived with him at Louisville on the Sabbath, have left the steamboat before the commencement of the Sabbath, had they been so disposed? Ans. I don't know—I suppose they could. Ques. Did you understand that Mr. Parker arrived at Louisville sometime about 8 or 9 o'clock on Sabbath morning; that he preached at that place in the forenoon: and left in the boat, with several members of his church, in the afternoon? Ans. In regard to the particular time I am not positive. My impression is it was about 8 or 9 o'clock. It was in the morning. I understood from him that he did preach in the forenoon, and left in the boat, with several members of his church in the afternoon. Ques. Did Mr. Parker make any other excuse for travelling on the Sabbath, as before stated, than this—that there would be less public notice, or outward desecration of the day, by quietly going on in the steamboat than in removing their baggage from the boat to the Hotel at Louisville? Ans. That was the reason that he stated, and the only reason that I recollect. Ques. Do you know of any other matter or thing connected with Mr. Parker's travelling on the Sabbath, or in your correspondence or conversations with him on the subject, that is material in the case, and if yea, please state it? Ans. I don't know any thing. Ques. Have you ever seen a work entitled "Lectures on Slavery and its Remedy," by Rev. Amos A. Phelps, to which is prefixed the Opinion or Declaration of Sentiment of one hundred and twenty-four clergymen, by which they committed themselves to the sentiments expressed in the document to which they annexed their names, and is the book now exhibited, marked C, a copy of that work? Ans. I suppose it is the work. Ques. Look at the paper now shown to you, marked A, and say whether it is, or is not, a copy of said Declaration of Sentiment, and whether the signature of Joel Parker, Pastor of the Free Presbyterian Church in New York, is in the handwriting of Mr. Parker. Ans. I suppose this to be the Declaration, and have no doubt of it. I am certain this is the handwriting of Mr. Parker. Ques. Please look at the paper now shown to you, marked B, and say whether it is not an exact copy of the paper, marked A. Ans. I suppose it to be an exact copy. Ques. Did or did not, Mr. Parker speak to you in Cincinnati of having signed the Declaration of Sentiment prefixed to Phelps' Lectures on Slavery, and did he or did he not, give any hint, or make any statement, that it was done without knowing the nature or the character of that instrument? Ans. He did speak to me in Cincinnati of having signed that paper, and gave no intimations that he had done it without understanding the character of that document. Ques. Have you, or have you not, a distinct recollection of Mr. Parker's stating to you in Cincinnati, soon after the discussion of the subject of slavery among the students of Lane Seminary, in the year 1834, his approbation of the course of those students who had taken the anti-slavery ground in opposition to the opinion of the officers of that institution and others—and also that in his conversation he led you to believe that he then favored the views held then and since by the American Anti-Slavery Society? Ans. Such were the impressions I received from the entire conversation I had with Mr. Parker at the time, viz. that he did approve of the course pursued by the students, and of the principles of the American Anti-Slavery Society. Ques. Did, or did not, Mr. Parker tell you at Cincinnati, after listening to the remarks of Dr. Beecher and Professor Stowe to the students of Lane Seminary, in opposition to the course they had taken on the anti-slavery question, that the cause they had adopted was going to be popular in this country, and that as for himself he was always inclined to be a radical, or words to that effect? Ans. He did. Ques. From the knowledge you have gained of Mr. Parker's sentiments and actions, by conversation or correspondence with him since he left the city of New-York to reside in New Orleans, on the subject of the Sabbath, and on the question of abolition, do you, or do you not, know that he has much altered in those respects? Ans. I would simply say that I was struck with the difference between Mr. Parker's manner of speaking on those subjects when at Oberlin last fall, and when at Cincinnati at the time before referred to. Ques. Do you know of any other matter or thing connected with Mr. Parker's profession of anti-slavery doctrines, before he went to New Orleans and subsequently, and his profession or advocacy of different doctrines since he signed the Declaration of Sentiment, from those contained therein, and if yea, please state what you know on the subject. Ans. I have stated all that appears to me material bearing upon the subject.

The appellant applied to the Committee of Session for a copy of the cross examination of President Mahan, but it was refused. It, however, elicited nothing essential in the case, though it bore much evidence of a vain attempt to thwart and perplex. In April the appellant applied to the Session to take further testimony, but they informed him that they did not "consider it expedient to take further testimony at present." He therefore obtained the following affidavit, and was offered others relating to different facts, but did not think it important to swell this work with them.

AFFIDAVIT OF REV. CHARLES W. DENISON.

City and County of New York, ss.

Charles W. Denison, late of Wilmington, in the State of Delaware and at present residing in the City of New York, being duly affirmed, says: That he resided in said city during the whole of

the year one thousand eight hundred and thirty-three, during which time he edited a newspaper styled the EMANCIPATOR, the publishing office being at No. 130 Nassau Street. This deponent further says that in the summer of 1833, Rev. Amos A. Phelps, of Boston, had a work in the press entitled *Lectures on Slavery*, and being desirous of prefixing to it a Declaration of Sentiment by several clergymen and others, he, the said Phelps, issued a printed circular, and sent it to various individuals in different parts of the country, for the purpose of obtaining signatures, one of which was sent to the city of New York, and received the signature of the deponent and several other persons. This deponent further says that the Rev. Joel Parker, then residing in the city of New York, came to said office, while the said circular was there, and affixed his signature to the same, without making any reservation, and as the deponent fully believes with a perfect understanding of the contents of said circular, and with a hearty assent to the sentiments contained therein. This deponent further says that after said Parker had left the office he recollects distinctly that it was a matter of conversation with the persons present that Mr. Parker had embraced the doctrine of the Anti-Slavery Society. And this deponent further says that the paper hereto annexed and marked C is an exact copy of the circular signed by said deponent and by said Parker, he having compared it with the original paper marked A. this day, and he believes and has no doubt that the signatures are genuine.

CHARLES W. DENISON.

Affirmed before me the 29th April, 1839.

JOSEPH STRONG,
Commissioner of Deeds.

APPEAL AND COMPLAINT.

NEW YORK, Jan. 15, 1839.

To Mr. Wm. D. Coit, Clerk of Broadway Tabernacle Church.

Dear Sir,—I hereby give notice, for the information of the Session, that I appeal from their decision to the Presbytery, and shall also carry up the case by complaint.

The reasons of my appealing and complaining are,—

1. The manifestations of prejudice in the case, on the part of the Session.

2. Their refusing to grant a commission to take the testimony of Rev. Asa Mahan and Rev. A. A. Phelps.

3. Their refusal to place important parts of the proceedings on record.

4. Their requiring that I should, at an early part of the trial, furnish a list of all the witnesses whose attendance I should expect on the trial, on pain of forfeiting my right to receive their testimony.

5. Their insisting that I should not employ a stenographer to record all the proceedings for my use.

6. Their trying me for alleged offences not contemplated when the citation was issued.

7. Their citing me to answer to a charge of slander for words used at a meeting of the church to discuss the qualifications of a person nominated for minister (pastor.)

8. Their being under a bias of mind, and feeling such a deep interest in the result of the trial, as disqualified them for that equable state of mind, and impartial judgment necessary in judges.

9. Their precluding me from proving that some of the persons cited to give testimony were not credible witnesses.

10. Their unconstitutional decisions on several points.

11. And their refusing me, in the above and many other respects, "a fair and impartial trial."

I shall complain,

1. That I excepted to three of the Elders sitting as my judges, for reasons assigned.*

2. That I was sentenced for contumacy when I had not refused to obey the citation of the Session, and was willing to proceed to trial.

3. And that the proceedings and decision were injurious to the interests of religion, and calculated to degrade the character of church judicatories.

I remain, respectfully,
Your friend and brother,
LEWIS TAPPAN.

ACTION OF THE SESSION.

Session met at the study January 14 (15) 1839. Mr. Tappan presented his appeal and complaint to Presbytery from decision of Session, which, on motion, was ordered to be placed on the minutes. Mr. T. having intimated a willingness to unite with Session in a call of Presbytery to adjudicate his case, it was resolved that Session are prepared to unite with him for that purpose at the earliest convenient time.

Tuesday evening, January 22, 1839, Session met at the study. The clerk pro tem, was appointed a committee to act in behalf of the Session, and unite with Mr. Lewis Tappan in calling a meeting of the Presbytery to issue his appeal and complaint from the decision of the Session in his case.

The committee appointed to draft a minute embodying the decision of the Session in the case of Mr. Lewis Tappan, and the reasons of the same, respectfully submit the following, which was adopted, viz. Resolved, that Mr. Lewis Tappan be and hereby is excluded from the communion of the Church for contumacy, till he give evidence of repentance, in refusing to submit to the order of Session in relation to retaining a stenographer for the purpose of taking minutes and spreading all the circumstances of the case before the public, and refusing to submit to other decisions of the Session.

The reasons for this decision are the following:

1st. Mr. Tappan contumaciously persisted in resisting an order of the Session, as will appear from a former minute. The Session had decided that Mr. Tappan could not be allowed to retain a stenographer in the Session, with the declared purpose of "spreading every word spoken here before the public." Mr. Tappan, although he yielded to this order at the time, at the next meeting again brought the stenographer and declared to the Session that he had taken advice, and that the proceedings of the Court in this matter were arbitrary and unjust, and that his stenographer should stay as long as he did, and that he should not leave the room, unless put out by force.

2nd. Mr. Tappan used opprobrious language against the Session—He affirmed that they were arbitrary, that they had prejudged the case, and

* Should have been, *that my excepting to three of the elders as judges, for reasons assigned, was overruled.*

evidently from the beginning, had determined to condemn him. He insinuated that they met to affirm the doings of a previous meeting—He accused them of persecuting him on account of Anti-Slavery—of trampling on the Christian liberty of his brethren and sisters, here present, in his person—He accused them of having altered the minutes, declaring as a reason for again introducing his stenographer, that an important alteration had been made in the testimony of one of the witnesses, and stated that he knew nothing of it until he heard the minute read, and this he said, although he had made objections to the alterations at the time that the testimony was read to the witness and altered by his direction—He told them that they had not arraigned him for the things which they intended, when the citation was issued. After the motion was made for his exclusion, he declared he preferred to be excluded, to being tried by such a body—warned the Session that they would fall into a pit, which for aught he knew they had been digging for others, that their course was known to be arbitrary, and that they did not dare to bring David Hale before them and let him be heard on the subject—that if he was condemned, he would not submit to the least punishment for any thing he had done in the Church, no, not the weight of a feather.

3rd. Mr. Tappan treated the Moderator with great indecorum. He disputed nearly every decision of the chair—he demanded that the reasons of the decisions of points of order, should be recorded—when the Moderator had decided that witnesses thereafter to be examined could not be present at the reading of the minutes containing the testimony of previous witnesses, Mr. Tappan insisted notwithstanding the decision of the Moderator that if citations had not been served [although Mr. Tappan had named them as his witnesses] they should not be excluded—when the Moderator had fully decided that they must be excluded, the accused still insisted upon their remaining and they did remain.

4th. Mr. Tappan was so turbulent as to render it quite impossible to proceed with the trial—he occupied nearly the whole of the time in representing the injustice of the treatment which he had received, and so conducted his cause, as to keep the minds of those present employed about the conduct of the Court and the Moderator, rather than about the matters of which he was accused.

Tuesday evening, Febuary 5, 1839. Session met at the study—on motion, Rev. Joel Parker and Elders Bliss and Doremus, were appointed Commissioners to appear before Presbytery, in the case of Mr. Lewis Tappan's appeal and complaint from the decision of Session.

Extract from the minutes.

Wm. D. Corr, Stated Clerk.

Feb. 11, 1839.

MINUTES OF PRESBYTERY—EXTRACTS.

Special meeting, Feb. 11th, 1839, 3 o'clock, P. M., Lecture Room of the Bleecker St. Church.

The Third Presbytery of New York met, &c. "to issue an appeal and complaint by Lewis Tappan from a decision of Broadway Tabernacle Church Session," &c. Rev. Joel Parker, of the Presbytery of Louisiana was invited to sit as a corresponding member. The appeal and complaint of Lewis Tappan from and of a decision of the Broadway Tabernacle Session having been found to be in order, due notice was given by the moderator that that Presbytery were about to sit as a court of Jesus Christ. The Presbytery proceeded, 1. To hear the sentence appealed from. 2. To hear the reasons assigned by the appellant for his appeal, as on record. 3. To hear the whole record of the proceedings of the Session, including all the testimony, and the reasons of their decision. 4. To hear the appellant. Before the appellant had concluded, the Presbytery adjourned to meet in this place to-morrow at 3 o'clock P. M. Concluded with prayer.

Bleecker Street Lecture Room, Feb. 12th, 3 o'clock P. M. Opened with prayer. The Presbytery resumed the consideration of Mr. Tappan's appeal and complaint. The appellant was heard in conclusion. Adjourned.

Feb. 13th, 3 o'clock P. M. The Presbytery met. . . The Presbytery resumed the consideration of the appeal and complaint of Mr. Tappan. J. C. Bliss, M. D. was heard in behalf of the Respondents. Rev. Absalom Peters, Mod. pro tem. of the Session, was also heard, in part, in behalf of the Respondents. Adjourned.

Feb. 14th, 3 o'clock P. M. The Presbytery met. . . Resumed consideration, &c. Rev. Dr. Peters was heard in conclusion. Rev. Joel Parker, pastor elect of the Tabernacle church, in view of his peculiar relations to the case, was also heard (Mr. Tappan freely consenting) in behalf of the Respondents. The appellant was heard in reply. All the parties having been fully heard, Presbytery adjourned.

Feb. 15, 1839, 3 o'clock P. M. The Presbytery met. Resumed, &c. The original parties, and all the members of the inferior judicatory, having withdrawn, the roll was called that every member of Presbytery might have an opportunity to express his opinion on the case. Before the calling of the roll was completed the Presbytery adjourned.

Feb. 18, 1839, 10 o'clock A. M. The Presbytery met, &c. The call of the roll was completed. After which the final vote was taken, and the appeal and complaint were *not sustained*. (It was understood that 11 voted for sustaining and 14 against it.) A committee, consisting of Messrs. Mason, Downer and Nevins, was appointed to draw up a minute embracing the reasons for the decision. Adjourned.

Feb. 25th, 1839, 3 o'clock P. M. Presbytery met, &c. The committee appointed to draft a minute embracing the reasons for the decision of the Presbytery in the case of Mr. Tappan, presented their report, which was adopted. The appellant gave notice of his intention to appeal from the decision of Presbytery to the next General Assembly. *Resolved*, That in accordance with the provisions of the Form of Government, Chap. 10: Sec. 8, a committee of advice, consisting of Messrs. Mason, Patton, and Leavitt be appointed for the purpose of consulting with the Session of the Broadway Tabernacle church, and Mr. Lewis Tappan, and, if practicable, to induce these parties to an amicable adjustment of all their present difficulties. Adjourned. Concluded with prayer.

The following ministers and elders voted to *sustain* the appeal and complaint. *Ministers.*—E. F. Hatfield, William Patton, J. J. Slocum, R. C. Brisbin, N. E. Johnson. *Elders*—J. A. Davenport, Alexander Milne, Lewis Hallock, M. D., A. S. Ball, M. D., J. M. Dimond and P. Hudson.

The following voted *not to sustain. Ministers*—C. S. Porter, moderator, Erskine Mason, D. R. Downer, William Adams, A. D. Smith, J. W. McLane, J. J. Ostrom, Charles Hall, B. Labaree. *Elders*—H. Griffin, R. L. Nevins, Jona. Leavitt, John Conger, L. Jackson.

ARGUMENT OF APPELLANT.

The appellant was heard, with patience, by the Presbytery, while he attempted to enlarge upon the reasons he had briefly assigned for making his appeal and complaint. It was his endeavor to confine himself strictly to an amplification of those reasons. Some parts of his argument will be omitted here, as they will be included in the report of his remarks before the General Assembly.

The appellant said he would, in the first place, endeavor to exhibit the manifestations of undue prejudice on the part of the Session. They had recorded, as evidence of his litigious spirit, that he said the examination of witnesses would continue for several weeks, that he should require that the questions and answers be recorded, and that he did not see as he could reach *his* witnesses till the ensuing month, while they had neglected to record the explanation of the accused, that when he made the remarks he was under the impression that the meetings of the Session would be weekly, as usual, or not held from day to day, and that he disclaimed entirely making the remarks from the litigious spirit imputed to him. The Session also recorded as evidence of a litigious spirit, the affirmative answer of the accused, to a question put by Dr. Bliss, whether it was his wish that the case should pass up to the General Assembly, and refused to add the words—"if necessary." They also recorded a remark of the accused, made under an apprehension that he would be unjustly condemned, that he wished the case to go to all the courts above, without recording the reason assigned, viz. that he wished to justify his conduct before all. The Session recorded as further evidence of the improper spirit of the accused, that he said manifest and outrageous injustice had been done him, and absolutely refused to record the accompanying and qualifying expressions, that it was his honest opinion, and said without any disrespect to the court. In view of these facts the appellant contended that they clearly evinced undue prejudice on the minds of the members of the lower court, a disposition to catch him in his speech, and a settled determination to arrange their record in such a way that the court above would necessarily have before them an *ex-parte* and prejudicial view of the facts. He contended further that if the accused did manifest a litigious spirit, it was *no crime*. The book, page 413, says indeed, that "if an appellant is found to manifest a litigious or other unchristian spirit, *in the prosecution of his appeal*, he shall be censured, &c." But the conduct, said to be litigious, was not in the prosecution of the appeal, but in conducting the defence. The Session ought to have recorded the words of the accused without clipping them, with the explanations, and left it to the court above to decide whether they were deserving of censure. *They* had no authority to make such a record, and by making it, especially without the explanatory clauses, they evinced a desire to have the accused represented to the Presbytery in as unfavorable a light as possible. Instead of wishing to prolong the trial, to throw obstacles in the way of proceeding, or of manifesting, in any way, a litigious spirit, the accused referred for evidence to the contrary, to his letter on receiving the citation, to his waiving his right to ten days after the indictment was read in his hearing, to his informing the Session when arraigned, that he was anxious to have the trial proceed, to his consenting that Dr. Peters might preside without its affecting his competency as a witness, when he was aware that one of the specifications could not be legally proved without the testimony of that gentleman, to his desire that the Session would meet at 5 instead of 7 o'clock, and to various other proofs that occurred during the trial.

The appellant in the second place referred to the extraordinary refusal of the Session to grant a commission to take the testimony of Rev. Asa Mahan, and Rev. A. A. Phelps, on the ground that their testimony was, in their opinion, irrelevant. The moderator required him to state what he expected to prove by these persons, and a member of the Session suggested that a commission might be granted if an affidavit should be made, neither of which are authorised by the Book of Discipline. Neither the moderator nor the Session could, according to the book, decide upon the relevancy of the matters expected to be proved, nor throw any obstacle in the way of procuring it. It is only when a motion is made to have the trial postponed that the court can require the accused to state what he expects to prove. The Session was bound to appoint a commission in this case to take the testimony on the request of the accused. See Chap. 6 : Sec. 13.* But they refused, in the very teeth of the constitution, and what is, if possible, more flagrant, they decided that their reasons for making such a decision shall not be recorded! As if this were a mere question of order, and they were not obligated to put the reasons for deciding such questions, on record. The appellant had shown to the Session that the testimony wanted was material to his exculpation from one of the charges, that it could be soon taken, and without delaying the trial; and he now referred the Presbytery to Chap. 7 : Sec. 3 : page 411, where it is stated as one proper ground of appeal that a judicatory declined to receive important testimony. The appellant called the attention of the court to this high handed act of oppression, on the part of the Session, and asked how it was possible that it should have been sanctioned by the moderator, a man of great experience in ecclesiastical jurispru-

* "If the accused shall desire on his part to take testimony at a distance for his own exculpation, he shall give notice to the judicatory of the time and place when it is proposed to take it, that a commission may be appointed for the purpose."

dence, and who had even been a candidate for the important office of moderator of the General Assembly.

The appellant, in the third place, noticed several instances in which the Session had refused to place important parts of the proceedings on record. He referred especially to the decision that the accused was out of order, in objecting to three of the members of the lower court—to the decision not to refer the case to the Presbytery—to the decision that the accused was out of order in proposing that a member of the session should be appointed to conduct the trial—to the decision not to grant a commission to take Mr. Makan's and Mr. Phelps' testimony, &c. It was alleged by the moderator, Dr. Peters, that as there were questions of order, the Session were not bound to record their reasons for the decisions. The appellant contended that they are not questions of order, and even if they were, the reasons for the decisions—briefly, at least—should go upon record. The law, he knew, gives great discretion, but it must be seen that it is exercised wisely. The book states expressly—Chap. 4: Sec. 23; page 399, "In recording the proceedings, in cases of judicial process, the reasons for all decisions, except on questions of order, *shall be recorded at length*—that the record may exhibit every thing which had an influence on the judgment of the court." And one of the reasons of this rule is given in the next clause, "And nothing but what is contained in the record, may be taken into consideration in reviewing the proceedings in a superior court." It was unfair, then, as well as unconstitutional, to shut out parts of the proceedings that would operate beneficially for the accused. It showed a bias of mind in the moderator and Session, that unfitted them for the due administration of justice. Even in civil courts, the judges are obliged to sign bills of exception, though they be irrelevant, to show the case as the party or his attorney wishes. Shall not equal indulgence be given to a party on trial in an ecclesiastical court?

The appellant, in the fourth place, considered the requisition of the Session, that the accused should, at an early part of the trial, furnish a list of the names of all persons whose attendance he should expect as witnesses, *on pain of forfeiting his right to their testimony.* He referred to Chap. 6. Sec. 7: page 405, where it is provided that "no witness afterward to be examined, except a member of the judicatory, shall be present during the examination of another witness on the same case, unless by consent of parties;" which was the passage relied upon by the moderator, to justify the order of the Session, and contended that this clause refers only to witnesses on the part of the prosecution. If, he said, it refers to witnesses on the part of the accused, which he denied, it can only refer to those who have been *cited* as witnesses. Until cited they are not witnesses. A sweeping order that no person who may be present during any part of the trial, shall thereafter appear as a witness for the accused, is clearly illegal. On the part of the prosecution no witness can be introduced whose name is not given with the charges against the accused; but he can introduce witnesses at any part of the proceedings, and without giving any previous notice. The book is explicit on this point.—See Chap. 4; Sec. 7; page 396—"Although it is required that the accused be informed of the names of all the witnesses who are to be adduced against him, &c., it is not necessary that he, on his part, give a similar notice to the judicatory of all the witnesses intended to be adduced by him for his exculpation." The court, then, had no right to require him to furnish a list of witnesses, nor to refuse taking the testimony of any one who had been present during the examination of other witnesses, and who should be called to testify for the accused.

The appellant, fifthly, alluded to the decision of the session, excluding the reporter or short-hand writer. The doctrines asserted by the moderator, Dr. Peters, were, that the court had a right to sit in private, and of course could exclude *any person*; that if the accused refused to comply with the order, the session had the right to consider his offence as if he had not obeyed the original citation—could treat him as if guilty of contumacy, and cut him off from a trial; and that as the Book of Discipline required that the *sentence* of the court should be published only in the church or churches which have been offended, the court could restrain the accused from publishing it himself. Dr. Peters relied strenuously upon the last point. The appellant contended that the rule allowing church judicatories to sit in private was merely a recommendation in certain cases, and of course not part of the law, nor intended to apply in other cases; and that the rule, chap. 4: sec. 19. where it is said "the sentence shall be published only, &c." was intended *for the benefit of the accused*, and not for his injury, or for the benefit of the prosecution. He contended that all courts should be OPEN; that all ecclesiastical courts in the Presbyterian church were required to be "*open*, fair and impartial," until a *crim. con.* case occurred in the year 1819, when the spectators of both sexes, refused to retire on the intimation of a father in the General Assembly, and hissed the proposer, when the word "open" was left out, that if such courts could sit in private at all, it could only be in cases of peculiar delicacy; that usage and implication are in favor of the continuance of the term *open*, and of such a construction of the constitution; that if the lower court had a right to sit in secret, they could not exclude a single individual, but should have passed an order excluding all spectators; that if the court had power to hold their sessions in secret, the accused *insisting* that his stenographer should be present, cannot be an *offence* when the session could nullify and avoid it by the exercise of its power to exclude *all* persons; that the ground of appeal, chap. 7: sec. 3: p. 411—"A refusal of a reasonable indulgence to a party on trial" was illustrated, in the present case, by denying the accused the use of a reporter; and that the concession of the moderator, that the accused had a right to publish the testimony after the proceedings were finished, involved his right to the services of the reporter—because, although the accused claimed the *right* of publishing as the trial proceeded, he never declared it to be his *intention* to do so, but intimated the contrary.

The appellant, sixthly, stated the session had began to try him for offences they had not contemplated when they issued the citation. He ar-

gued this: 1. from the fact that he was not cited till nearly three months after the alleged offences were committed, when the book says, chap. 3: sec. 4: p. 394, that "the proper judicatory *is bound* to take *immediate cognizance* of the affair." 2. From the fact that he was cited only two days after some Anti-Slavery action in the congregation, in opposition to the wishes of the session. 3. Rev. Joel Parker had consulted his brethren in the ministry respecting the advisableness of instituting process for what was said by the accused at the meeting of the church, Sept. 24th, and they had advised him strongly not to do it—and 4. one of the elders, Dr. Bliss, in conversation with Mr. David Hale, after the citation was issued, said emphatically, as Mr. Hale asserts, that measures must be taken to break down or destroy the influence of the accused in the church.

In the seventh place, the appellant spoke of the fact that he had been cited to answer to the charge of slander for words uttered against Rev. Joel Parker *at a meeting of the church, met expressly to consult together respecting his qualifications for the office of pastor of that very church.* The appellant said Mr. Parker's merits had been expatiated upon at length, and pointed allusion had been made to him as a person who intended to bring forward certain specified objections; that he was therefore under a necessity of speaking, even if he had not intended it, and of alluding also to both the fictitious and real objections; that his feelings were kind towards Mr. Parker while he performed the painful duty of opposing the nomination; but if there was ever an occasion when a man's qualifications, history, and ministerial character could be spoken of freely it was at such a meeting; that even the witnesses on the part of the prosecution had stated that if Mr. P. would make satisfactory explanations, and make a confession similar to that he had required of others in similar circumstances, it would give him great satisfaction to set under his ministry.

The appellant stated, in the eighth place, that the Session had such a deep interest in the result of the trial, and were under such a bias of mind, that they were not qualified to be impartial judges in the case. He said this was notoriously true, and had it been otherwise they would have exercised more prudence, caution and discretion in their discipline, would have taken private steps, according to the gospel of Christ, before instituting judicial proceedings, and would during the trial, have been more observant of their high character as judges of a court of Jesus Christ. The appellant quoted several passages from the Book of Discipline respecting the preliminary steps, temper and conduct, obligatory in cases of church discipline. He stated also that a very contrary spirit had been exhibited towards him by Mr. Parker and the elders. Although he said, at the meeting of Sept. 24th, that if satisfied he was wrong he would acknowledge it, and at an interview he sought with Mr. Parker to inform him of all he had said against him he had told him he should rejoice in being corrected if he had stated what was incorrect, yet the members of the Session had been very busy, from Sept. 24 to Dec. 18, in talking against him, both with members of the church, and persons out of it. The appellant stated that the temper and "bias of mind" manifested by his judges could be inferred from the declaration of Dr. Bliss, on the trial, that the court could if they pleased, require the accused to attend trial at 6 o'clock in the morning—in the month of January—and in the prompt response of the moderator—"undoubtedly;" also in Dr. Bliss's asserting, while sitting as a judge, that the accused had slandered Mr. Parker in relating what he did at the meeting of the church Sept. 24th, respecting his desecration of the Sabbath, although that subject was not before the court. This "bias of mind" was also evinced by the refusal of the Session to record their decisions on many important questions; to record the explanation of the person on trial when accused by the court of manifesting a litigious and contumacious spirit; in opposing the desire of the accused to take important testimony necessary to his exculpation; in allowing improper questions to be put to witnesses, for example, "Did not Mr. T. show feelings of hostility towards Mr. Parker?" "Did you *infer* from the accusations the accused alleged against Mr. P. that he had become an apostate, if they were true?"; in repeatedly recording what they deemed a litigious spirit on the part of the accused, and in a way to exhibit what he said in the most unfavorable point of light; in refusing to let the accused ask proper questions of witnesses; and in excluding the short-hand writer by an arbitrary, unusual and oppressive resolution.

The appellant said, recently, the Session had precluded him from proving that some of the persons cited to give testimony against him were not credible witnesses. He referred the court to Chap. 6: Sec. 4, page 404, where it is stated that the *credibility* of a witness, or the degree of credit due to his testimony, may be affected by . . deep interest in the result of the trial . . by various other circumstances—TO WHICH JUDICATORIES SHALL CAREFULLY ATTEND." The accused was checked by the moderator in his attempts to show that the witnesses were unduly prejudiced; he decided that it was out of order for the accused to ask the witness if he had conversed with any member of the court respecting the part he took Sept. 24th, contrary to the common rule that a party has a right to ask any question to show that the witness is under a bias of mind—not to discredit him, but to show his state of mind—not to bear upon his *competency* but his credibility. The appellant stated that the moderator also decided that it was irrelevant for the accused to ask the witness if he felt such a deep interest in the result of the trial that his mind was under prejudice, and that the Session had also, by refusing to take the testimony of Messrs. Mahan and Phelps precluded him from proving, among other things, that Rev. Joel Parker was not a credible witness in this case.

The appellant, in the tenth place, went into a full examination of the various unconstitutional decisions and acts of the moderator and the Session. He noticed those that have been alluded to under different heads, and several others, among them the following: the moderator assisted the clerk to record the answer of a witness by repeating *the substance* of it, and claimed to have all the questions and answers made *through his mouth* if he pleased instead of having them recorded, as was claimed by the appellant, in the words of the witnesses; the moderator said that no question should be put

or answered except by his permission, and that every question must be shown to him before it was put to the witnesses, when the Presbytery, being the revising court, the records of the court below ought to show the facts in the case.

The appellant said the specifications charged slander, &c., but the records show a sentence of conviction for contumacy, contrary, as he believed to the Book of Discipline, and to all legal or equitable precedent. He said, to indict a man for an assault and battery, and find him guilty of larceny, would be a singular proceeding, and unallowable in any court. The appellant argued that "contumacy" is refusing to appear on citation to answer for some offence, but that he had been present, and was willing to proceed with the trial. He also argued that if he had been guilty of contumacy his punishment should have been *censure* (chap. 4: sec. 13, page 397,) or if it had amounted to an "offence" he ought to have been brought before the judicatory for trial in one of the modes pointed out by the Book of Discipline (chap. 4: sec. 2, 3, 5, page 395.) He stated also that his persisting in having a stenographer present did not exonerate the Session from observing all the forms of proceeding prescribed in chap. 4: sec. 11, 12, and 13. The appellant said that chap. 1: sec. 3, page 391 defines that "an offence is any thing in the principles or practice of a church member, which is contrary to the word of God; or which, if it be not in its own nature sinful, may tempt others to sin, or mar their spiritual edification:" and that it is provided in chap. 1: sec. 4—page 391, that "nothing therefore ought to be considered by any judicatory as an *offence*, or admitted as matter of accusation, which cannot be *proved to be such from Scripture*, or from the regulations and practice of the church, *founded on Scripture*;" and which does not involve those evils, which discipline is intended to prevent." He could not therefore comprehend how his resistance of the decision of the Session, excluding the stenographer, can be proved to be an offence from Scripture, or from the regulations and practice of the church, *founded on Scripture*, nor in what way a desire and determination to have all the proceedings recorded, and published to the world if necessary, can be considered *contrary to the word of God*, or *in its own nature sinful*, or which may *tempt others to sin*, or *mar their spiritual edification*.

The appellant said that with regard to his being sentenced for *refusing to submit to other decisions* of the Session, it appeared to him an unusual thing to sentence an individual for crimes or offences not specifically mentioned. It was true the Session had enumerated sundry offences in their minute mandrawn up after the arrest of the trial, but it did not date appear from their record that any crime or offence had been charged except that of contumacy with respect to the stenographer. It seemed then to be an after-thought to bring up other matters. The appellant had expressed opinions at variance from those of the Session, during the trial, but had not refused to submit to any other decision except in the case of the stenographer.

The appellant went, at some length, into an enumeration of the instances in which he had been denied "a fair and impartial trial," and cited a great number of decisions by the moderator, Dr. Peters, that he deemed arbitrary and unconstitutional. Dr. P. had decided that a member of the court might go to the clerk, add to the record, dictate to the clerk how to record what had been stated, make erasures in the records, and that the book did not say that the question should be recorded before the answer was obtained, although the book, chap. 6: sec. 10, page 405, says, "Every question put to a witness shall, if required, be reduced to writing. When answered, it shall, together with the answer, be recorded, if deemed by *either party* of sufficient importance." Dr. Peters allowed Dr. Bliss to propose questions to the witness without their being written down, after the accused had referred him to the above clause in the book. The appellant contended that the question ought to be written on the record even if not allowed to be put, and that all the answers should be recorded as given, agreeably to the rule above recited; and that there was great propriety in it, as, according to Dr. Peters's rule, if an answer was inconsistent a question might be so shaped afterwards (particularly if all questions and answers should "go through the moderator's mouth") as to suit the original answer. The appellant complained that Dr. Peters decided that the following was an irrelevant question, that the witness was not bound to answer—"Did or did you not think that each member of the church had a right to express his views and feelings on the important subject before the meeting?" and referred to chap. 4: sec 15: page 398, where it is provided that "He," the accused, "shall be permitted to ask ANY questions tending to his own exculpation." The moderator, in justification of himself, quoted chap. 6: sec. 8: page 405,—"But no question shall be put or answered, except by permission of the moderator." As it is not to be presumed that the book contradicts itself, these clauses should be interpreted so as to harmonize in meaning. The obvious meaning is, the accused shall ask no question, but by permission of the moderator, that does not tend to his own exculpation. The interpretation given by Dr. Peters, seemed more like the special pleading of an attorney than the opinion of a judge.

The appellant stated that the moderator allowed the words, "of the speech," to be *added* to the answer of a witness, and on his declaring that the witness did not utter them in his answer, and asking the witness if he did, the moderator anticipated the reply of the witness, by saying "he did." This was another instance, in view of the appellant, when the moderator forgot his character as judge in acting as a partisan. It was his duty to decide what the witness said, and no more. The moderator decided that the witness need not answer a question put by the accused, "whether the witness had blamed him for the part he took on the 24th September?" although it was a proper question, being equivalent to asking the witness if he thought the accused reprehensible *at the time*. The moderator required the accused to write his questions after the stenographer had been excluded, before proposing them to the witness, and thereby throwing upon him a labor inconvenient and oppressive—saying, "you are bound to as much as the clerk." He also refused to have the record amended, on the request of the accused, so that it should read that objection was made to three of the judges *previous* to his saying he was ready to go to trial, after the moderator had declared that the fact was stated subsequently. The accused claimed to have the fact stated in the order of proceedings, but it was

overruled. The moderator would not suffer witnesses to answer the question of the accused, whether they had been told, or understood, that the accused was to be cited because of his Anti-Slavery action in the church, although the question was a pertinent one,—the accused having an undoubted right to give the court above the opportunity of judging of the feelings of the Session towards him.

The appellant contended that the moderator was guilty of an impropriety in allowing Dr. Bliss to put the following question to a witness. "Did not Mr. T. show feelings of hostility towards Mr. Parker?"—it being a well-known principle that a witness should testify only as to *facts*, and not give his opinion unless he is a professional man. The moderator also allowed the same person to ask the witness if he did not *infer* from the accusations of the accused against Mr. Parker, that he had become an apostate, if they were true; as if a witness, instead of stating *facts*, might entrench upon the prerogative of the court by drawing inferences. The moderator allowed the clerk to erase a question put to a witness by a member of the court, after the witness hesitated in giving an answer, and after the moderator had endeavored to explain the question. He objected to Mr. Birney's making suggestions to the accused although he had permitted Mr. Parker to make suggestions, offer his opinion, &c., on behalf of the prosecution. He also decided that a question could be taken on a motion, and that subsequently the clerk could record the *spirit* of it. He also required the accused to reduce all his questions to witnesses to writing before propounding them, although he had permitted the clerk and Dr. Bliss to read questions from the specifications, or propound them orally, and reduce them to writing after they were answered.

The appellant contended that the Session disallowed him a "fair and impartial" trial in the following particulars, among many others: in refusing his request that the expression "other matters," in the sentence, should be explained; in refusing to record his explanations of declarations deemed contumacious, thus misrepresenting his meaning; in allowing one of their number, Dr. Bliss, to act as prosecutor and yet retain his seat as a judge; in refusing to record the reasons of their decisions; in refusing to grant a commission to take the testimony of Mr. Mahan and Mr. Phelps, although the accused stated that it was essential to his exculpation, and the trial would not be delayed thereby; in allowing one of their number, Dr. Bliss, to act as prosecutor and judge after saying to D. Hale, before the trial, that measures must be taken to break down or destroy the influence of the accused, and after the accused had referred them to No. 41, General Rules, they pleading that the rules were general and not binding (after having quoted one of these rules, viz. No. 37, on another occasion, as authority) although the moderator had admitted that the obligation to appoint some one to conduct the trial rested very much on usage, and Rev. Joel Parker had given his opinion, as requested, that it was a common practice; in excluding the stenographer the second day of the trial, and attempting to exclude him the third day, although he was silently acting for the accused as his clerk and reporter; in sentencing the accused to being excluded from the communion of the church, for retaining the stenographer for the purpose of taking minutes and spreading all the circumstances of the case before the public, &c. after it had been admitted that the accused had a right to publish the testimony, &c., after the proceedings were finished; and in the general course of their proceedings.

The appellant, after closing his remarks respecting the APPEAL, remarked upon his COMPLAINT, and said that interested, prejudiced and pre-determined men sat as his judges; and although he did not claim to challenge any of the members of the inferior court in their character as judges, nor to argue against the constitution of the Presbyterian church, which allows elders to sit in the mixt character of judge, juror, and witness, he did complain that men who had openly declared, before the arraignment, that the accused must be convicted, or words to that effect, should have been induced, from their own sense of propriety, or the action of their associates, to have retired from the bench of justice in this case. He remarked also upon the sentence for contumacy, which is refusal to appear, and stated that he had promptly obeyed the citation, was in court, and was willing to proceed in the trial that was pending till it was arrested by the action of the session, and therefore had not been guilty of contumacy; he argued that the proceedings and decision of the session in various instances, were injurious to the interests of religion, and calculated highly to degrade the character of church judicatories and the reputation of the Presbyterian church. The complainant remarked upon the strange, oppressive and unscriptural act of the session in excluding him from the communion of the Lord's Supper for the crime, as it was termed, of contending for the right of having a reporter to make a full and fair record of all the proceedings, to use in defence of his character, the promotion of justice, the comfort and defence of persons similarly situated, and the edification of the members of the Tabernacle church.

The complainant likewise spoke of being required to "repent" of an act possessing no sinful character, the offence being merely moral resistance to an unconstitutional mandate of the session, and not an offence displeasing to the Redeemer, and unfitting him to sit at the table of his Lord. He alluded also to the fact that he was tried for an alleged offence, after a large number of ministers, belonging to this Presbytery and other bodies, had, with great unanimity, advised Rev. Joel Parker not to institute process, or cause it to be instituted in the premises, and that citation had issued nearly three months after the day when it was alleged that the offence had been committed, although the Book of Discipline requires that when a person is charged with a crime by general rumor, the proper judicatory is *bound* to take IMMEDIATE COGNIZANCE of the affair. The complainant, in conclusion, spoke of being arraigned for slander &c., when it was notorious that the real offence was Anti-Slavery action in the congregation; and remarked upon the persecuting, irritating, and unchristian spirit manifested, throughout all the proceedings, on the part of the moderator and the session, respecting which, together with their unconstitutional acts, he brought his complaint to this court with a full conviction that justice, equity, and the principles of the gospel, required that it should be sustained.

Dr. Bliss' Speech.

Dr. James C. Bliss,* occupied the attention of the Presbytery about three hours. He stated that the accused seemed resolved, before the session, not to submit to a trial, and it was his purpose to defeat the ends of justice. As one evidence of it, the accused had brought forward forty to fifty decisions that were declared to be out of order by the moderator, with the Book of Discipline in his hand. The accused had, said Dr. B., showed a want of consciousness of his innocence. He had experience in arts of chicanery; he had delayed everything in a threatening manner—menacing the session; he had refused to answer Dr. B.'s question whether Messrs. Mahan and Phelps would testify so and so, or could state anything material in the case; he moved that the *whole case* should be referred to Presbytery—when it was not his province to make a motion; he introduced the stenographer, with a *menace* before the indictment was read; he did not say he wanted the proceedings for his use; he wanted the stenographer to give a coloring perhaps to what was false, and intended to give a false impression; if his word had been believed Mr. Parker's character would have been ruined; but the individual had not the confidence of the audience, and ought not to have had it; he manifested hostility to Mr. Parker; he intimated that he had some right of dictating about the adjournment of session; he attempted to hold up, in the most odious point of view, the moderator, who had been invited to preside on account of his experience and impartiality, and whose decisions were according to strict principles of right; he *threatened* the session that he would publish the proceedings; he came to intimidate the court, and by menacing a publication to make them subservient to his purposes; he violated the law by bringing in a stenographer, when the proceedings of such courts are not to be made public; he was not willing to have all the facts recorded by the court; he said he would not regard the decision of the court; he has shown, in twenty-seven instances, the greatest disposition to evade justice that ingenuity could invent; his reasons are futile; the records show his gross misrepresentations in many respects.

Dr. Bliss said the appellant had stated that the record of the session made him say he should be happy to present the case in all the courts, and had omitted to add the words of the accused—"if necessary"—whereas those words were part of the record. Dr. B. justified the session in refusing to grant a commission to take the testimony of Messrs. Mahan and Phelps, who were then in Boston, saying it carried absurdity on the face of it as by the same reasoning they might be expected to go to any part of the world, to take testimony. Dr. B. said the accused did not make an affidavit of what he expected to prove, and in civil courts a party is obliged to be specific and on oath. Dr. B. asserted that the session did record their reasons for the decisions they made, except when the decisions were merely those of order. He asserted also that employing a reporter was a device to throw obloquy upon the session. Dr. B. said the accused had declared that the fact that he objected to three of his judges was not put on record, but it was otherwise.* Dr. B. stated that it was not a fact that the accused was tried for matters not originally intended, and the reason the citation was deferred so long was the session had been informed, by one of their own body, that he intended leaving the church, as they hoped he would do, inasmuch as he had been seen at the Central Presbyterian Church,—and finding he did not go they hoped he would be orderly, and that the offensive slanders against Mr. Parker would not be repeated. Instead of this, said Dr. B., the accused came to the session on the 18th December, with a committee, and accused the Pastor of having apostatized, not that he used the word—but what he said amounted to it. This was what brought the session to a decision to table charges against him.† We took care, said Dr. B. laughingly, that he should not be tried for Anti slavery action, though on that ground his conduct might have been actionable. Dr. B. said the appellant had attempted to justify his slanders at the meeting of the church, saying he had a good purpose in view, as if it were justifiable to sin, if there was a great end to be accomplished.‡ Dr. B. spoke of the ingratitude of the appellant in speaking, as he had done of Mr. Parker, who had been instrumental in introducing several members of his family into the church, and he hoped into the kingdom of heaven.§ Dr. B. said it had been stated that he did not labor privately with the appellant before the citation, when the fact was he did go, and remonstrate with him after the meeting of the church, September 24th. [That is Dr. B. stopped, after the meeting, and censured the appellant in a circle of the brethren who remained to converse upon the proceedings of the evening!] Dr. B. alluded to remarks he had heard had been made by Mr. David Hale and the appellant, of each other, and said, if what they say of each other is true, neither of them is fit to be in a Christian church. After bringing these accusations Dr. B. read definitions of the word contumacy, from the dictionary, to show that the appellant had been guilty of the offence, and had been justly condemned, and he appealed to the Presbytery to know whether they would sustain the appeal, and thus sanction acts of such turpitude.

Remarks of Rev. Absalom Peters.

Dr. Peters, as a member of the inferior judicatory, said, the appellant declared before the Session that it was a misdemeanor in them to invite him to be moderator, and complained that he was a witness. He agreed to act as moderator, believ-

* This sketch was taken down at the time, and the precise language of the Doctor is used in this abbreviated report of his speech. The appellant is sorry, on account of the speaker, to be obliged to publish such a tirade, but fidelity requires a true account of the proceedings.

* The accused stated that the *reasons* for the decision were not recorded, and such the Doctor found to be the fact, on turning to the record, to which he was referred by the appellant.

† The appellant was cited, then, it seems, for words uttered in the *minister's study*, although the indictment says that *Common Fame* was the accuser!

‡ This is a great misrepresentation. The appellant merely stated that he had spoken *freely* of Mr. Parker, with good motives, and that what he said was true. One can hardly keep from shuddering when he remembers, that the person making such misrepresentations was speaking in the character of a judge in a court of Jesus Christ!

§ This is a mistake. Neither the appellant, nor his family, are insensible to the value of Mr. Parker's pastoral instructions and labors, in years past; but they have never supposed that any conversions in the family occurred through his instrumentality.

ing he should not be called as a witness.* The appellant complained that he had not been apprised of the specifications before the meeting of the Session for trial.† He also said he did not know what charges were to be brought against him, and yet he said he had expected to be tried for anti-slavery action.‡ Dr. P. said he proposed to the appellant to arrest the trial when he overruled his exception to some of the members of the court. He justified not recording the reasons of decisions by referring to chap. 4: sec. 23: page 399, where it says, "the reasons for all decisions, except on questions of order, shall be recorded at length."§ Dr. P. intimated that he agreed with Dr. Bliss in supposing the appellant wished for the testimony of Messrs. Mahan and Phelps on the question of slavery alone. He also said the appellant endeavored to show that every witness was a prejudiced man. Dr. P. stated many other things of a similar nature. He also undertook to describe what took place the last evening of the trial.

Remarks of Rev. Joel Parker.

Mr. Parker went into a statement respecting the demeanor of the appellant since he had been called to preach at the Tabernacle—spoke of their former intimacy—the present views of the appellant—his own unwillingness to leave him in his church—his expectation that he would have been too much of a gentleman to remain contrary to his declared wishes—that he had heard the appellant had said he did not believe he was a Christian—that the appellant had not called upon him, &c. &c. Mr. Parker began to read an extract of a letter he received from the appellant last autumn, who rose and objected to any extracts being read from any letter of his without his knowing previously the contents of the letter. Mr. P. went on to read, but the appellant again objected and said he did not know what letter it was that Mr. P. held in his hand. Whatever it was he was willing that it should be read entire, but not any extract. Mr. P. declined reading the letter in full, and put it up, concluding his remarks he said "I wish the brethren in the Presbytery would apply the golden rule in this case. Could any of you wish to have such a man in your church? If you would not then do not sustain his appeal, and thus send him back to mine!"‖

* The notes of the stenographer show that Dr. P. was incorrect in both these statements. Instead of complaining that Dr. P. was a witness, the accused waived objecting to his action in the double capacity of moderator and witness, as he might have done: and one of the charges could not be proved without his testimony. Dr. P. did not mention the fact that the accused waived the objection.

† This is a mistake. He complained that *others* had been apprized of the specifications, and he had not.

‡ The appellant surmised that he was to be tried for anti-slavery action, and did not know officially on what specific charges he was to be arraigned.

§ It was a very convenient mode of relieving one's self from the obligation to record the reasons of decisions, by terming them all questions of order! The decision not to take Messrs. Mahan and Phelps' testimony, for example!!

‖ It was well said by Rev. N. E. Johnson, afterwards, that Mr. Parker should have applied the "golden rule" to himself. The Session of Broadway Tabernacle were willing, by their own acknowledgement, to give Mr. T. a letter, up to the day of the citation, that he was in good and regular standing, and thus send him into any church in the Presbytery! And the Rev. J. Parker has recently said,—when it was remarked to him by Rev. Mr. Graves, "the best thing you can do is to give Mr. Tappan a letter to another church"—"I suppose it is."

Reply of Appellant to the Respondents.

The appellant expressed his surprise that the moderator should have permitted the Respondents to enter so largely upon ground from which he had been excluded, especially that they should have been suffered to impeach his motives, and traduce his character, as they had done. But he supposed it was owing, partly, to his own request, when Dr. Bliss was called to order by a member of the court, that he might be permitted to say what he pleased. The appellant said *he* had impeached no one's motives, but had endeavored, in his former remarks, to confine himself to the record. He proceeded to reply, briefly, to Dr Peters and Mr. Parker, and at more length to Dr. Bliss. Dr. Peters had caricatured the action of the appellant, when before the Session, showing that he had either misapprehended him, or, owing to his own excitement, saw things through a false medium. The appellant appealed to William Brown, Esq., James G. Birney, Esq., Rev. George R. Haswell, Mr. G. M. Tracy, and a large number of the brethren and sisters of the church, who were present, for a correct account of his deportment on that remarkable occasion, and for the facts relating to the demeanor of others. He knew, he said, very well the influence the Respondents would have upon the minds of many members of the court, especially Dr. Bliss, who was the gratuitous family physician to many of the ministers in the Presbytery, and who in times past had been to his family, as well as to the families of many of the members of the court, the "beloved physician." Knowing his own infirmities, said the appellant, he knew how to make allowances for Dr. B. Still, he is excitable, prejudiced, and probably really entertains the opinion that such a fanatic as he is should not be permitted to go at large. The appellant here related an anecdote of an elder in the Presbytery telling him, many people really thought that he, the appellant, had the monomania. You, said the appellant, married, I think, into a family of Universalists—did you not? Yes, said the elder. Well, you talk to them frequently about their souls—do you not? Oh yes, said the elder, I do, and pray for them daily, mentioning them by name at the family altar. Do you not think, said the appellant, they really think you have the monomania!—But even granting the appellant had a *moral disease* it should not be treated harshly. The appellant said he knew well that he had made himself of no reputation, but he had a right to ask for justice.

The appellant pointed out several inconsistencies in the speech of Dr. Bliss. At one time he had said, "the accused seemed resolved that he would not submit to a trial," and at another he asserted "that he should be happy to defend himself, in this matter, *before all the Courts.*" The appellant acknowledged that the words, "if necessary," were added to the record, and he was ready to state his error in supposing they had been omitted. He should be happy to acknowledge any other error that might be pointed out. He denied that he had attempted to brow-beat the session, or had uttered any threats or menaces. He appealed to the minutes of the stenographer. Dr. B. had argued that it was absurd to think it was the duty of the session to send a commission from their body to take testimony in any part of the world. But said the appellant, the book does not require that members of the session shall go personally. Dr. B.

stated that the appellant made a motion in Session, when it was not his province to make a motion, and that the Session could not refer the whole case without trial to the Presbytery, as the appellant had requested. In answer to this, the appellant stated that the moderator had decided that he could make any proposition, and that it was not proposed to refer the whole matter to Presbytery, but only the testimony for their decision. Dr. B. had said that it is contrary to the book to record the reasons for decisions on questions of order, but it is not *contrary* to the book, which says the reasons of all other decisions *shall* be recorded, leaving it discretionary to record the reasons for decisions on points of order, or not. Dr. B. had said that employing a reporter was a "device" to throw obliquy upon the Session. The appellant said he was unable to comprehend how reporting every word that should be said would be throwing "obloquy" upon the court, although if he had conducted, as has been alleged, it might be throwing obloquy upon himself. Dr. B. had declared that the "menace" of employing the stenographer, was uttered *before* the indictment was made, but this, said the appellant, is a mistake, as nothing was said respecting this person before the indictment was made, and the "menace" was couched in the following terms — "Mr. Sutton, a stenographer, appears here at my request to record the proceedings."

[When the appellant had proceeded thus far in his reply to Dr. Bliss, it being late in the week, and several of the ministers being anxious to prepare for the coming Sabbath, he relinquished finishing his reply, and here inserts the substance of what he had intended to say.]

Dr. Bliss has said, it was the purpose of the appellant to defeat the ends of justice. How does this agree with his readiness to proceed to trial without availing himself of the ten days allowed by the book after arraignment; and his taking a reporter, with the avowed intention of recording all the proceedings, with a view to publication at a suitable time? The Doctor has also said, that the decisions of the moderator were made with the Book of Discipline in his hand. This is true; and the appellant frequently referred him to passages, begged him to examine them, and endeavored unsuccessfully to induce him to decide according to the book. The decisions of the moderator, therefore, were deliberately made, and it is for the court to determine how far they agree with the book. If he, in many cases, made unconstitutional decisions, is it an extenuation or aggravation that he did it with 'the book in his hand,' and after the earnest expostulations of the appellant? Dr. B. has asserted that the appellant wished to retain the reporter, to give, perhaps, a coloring that was false, and with the *intention* of giving a false impression! These are heavy charges against two persons; they are cruel with regard to the professional man, who is present, and can make no reply, and ungenerous imputations against the appellant. Such accusations recoil upon the utterer. The respondent has said, it was not true that the appellant was tried for matters not intended when the citation was issued. It may be so; but his declaration to Mr. Hale, the lapse of time since the alleged slanders were uttered, the place where they were uttered, and the fact that anti-slavery action took place only two days previous to the citation, have satisfied the public that the ostensible were not the real causes of citation. The respondent says further, that the citation had been delayed, because the session were hoping the appellant would take a letter of dismission to some other church! Will any one believe that a session, composed of men determined prayerfully to discharge their duty, if they really thought the appellant had been guilty of the enormous crimes charged against him, would have been willing to give him a letter, that he was in "good and regular standing" to a sister church? Impossible! But Dr. B. has stated, that the appellant, on the very evening when the citation was issued, had been present in their room, and had accused Mr. Parker of apostacy—although he did not use the word.—The appellant did visit the session that evening, on a committee from the Sabbath school, of which he was superintendent, and was drawn into conversation on other matters by members of the session. In this conversation he expressed his fears that so long a residence at the south had produced an unhappy effect upon Mr. Parker; but he appeals to his associates on the committee, if he said anything disrespectful, unkind, or slanderous. Dr. B. has said, that the session took care not to cite the appellant for anti-slavery action, although he was liable to process on that ground; and he said, with exultation, that the session did not mean that he should *victimize* himself, as he would have gladly done, on such a subject. It appears from this avowal, that it was a matter of deliberation in the session, for what offence it would be expedient to try the appellant; and the inference is strong, that it was on advisement that the session abandoned the intention of citing for anti-slavery action, and thought their success in an attempt to drive the appellant from the Presbyterian church would be more successful, in the present state of public opinion, by trying him for slander, &c. against their new popular minister—Is it then an actionable offence to form an anti-slavery society in a congregation?—Could not eighty members of a church agree to form such a society, for the purpose of using moral suasion with their brethren, without making themselves liable to criminal process and excommunication? If the majority of a church will not do their duty with regard to the claims of Missionary, Temperance, and Anti-Slavery Societies, may not the minority endeavor to bear their testimony, and engage in Christian action on such subjects? Dr. B. has said, that the charges of *falsehood* and *slander* could be more easily substantiated against the appellant than other offences– that the proof would give the session less trouble, and could be proved by the hand-writing of the appellant. The appellant is desirous that such language should be contrasted with the language *he* used at the meeting of the church, Sept. 24th, that the court may see which party has used slanderous language. Dr. B. has grossly insinuated that the appellant justifies himself for slandering Mr. Parker on the ground that he had a good purpose in view, and that the end sanctifies the means. The appellant argued, not that he had a right to slander, but that it was right to exchange opinions freely of a candidate for the pastoral office, at a meeting of the church called to consider the nomination; that the statements made respecting Mr. P. were what he believed to be true, and that uttering what he believed, and with a good intention, was not slander. What a

perversion, then, for the respondent to make the insinuations he has done on this subject! Dr. B. has said, if the appellant's word had been believed, Mr. Parker's character would have been destroyed; and he alluded to the honored names of EVARTS and NITCHIE, to show, that if they had uttered such language against a minister his character would have been ruined. The time was when the reputation of Evarts would not have shielded him, had he spoken as freely, though truly, and on a fit occasion, of a popular minister. That excellent man had contended for what he deemed the truth, in such a manner, that he had made himself of no reputation with the majority of the community in which he resided. "The individual," said Dr. B. "had not the confidence of the audience, (the church,) and ought not to have had it." And yet the union of the two churches was ascribed principally to his efforts; he had just before acted as chairman at two meetings of the church, and Dr. Bliss, when leading prayer meetings, in the lecture room, after the words deemed slanderous had been uttered, had called upon him to pray. Dr. B. after alluding to the conduct of the appellant, said, "Will this court sanction such acts of turpitude?" And he went on to say, "if you do your character is not safe." Does this judicatory need such intimations? Is such language proper and consistent for an elder to use respecting an old associate elder, especially after prefixing to the indictment against the appellant the texts of Scripture respecting slander, bearing false witness, &c.?—The respondent, in alluding to the remark of the appellant, that most of the witnesses against him were officers of the church, had asked, "Shall not the officers of the church be credited?" And he had spoken of their weight of character, &c. To this it may be replied, that the appellant alluded to them, not as unworthy of belief because they were officers, or not good men, but because they had *prejudged the case*. The appellant cannot follow Dr. Bliss through the wide range he was permitted to take. He is willing to submit how far such assertions, epithets, and insinuations, become the respondent, the cause of truth and righteousness, or the dignity and holiness of a court of Jesus Christ.

[The appellant was alluding to the merits of the case, but he was pronounced out of or der by the moderator, who yet allowed Messrs. Bliss, Peters, and Parker, subsequently, to speak, without limitation, of any matters connected with the case. How the remarks, so far as they relate to the minutes of the session, could be out of order, the appellant has been unable to see. In the General Assembly the appellant would have been permitted to remark upon the indictment, testimony, minutes of session, but he concluded not to occupy the time of that venerable body by doing so. He will here add a few remarks that he attempted to make in presbytery.]

The appellant was prepared to prove the truth of all he asserted, Sept. 24th: at least, that it was not slanderous. He is anxious to have all the testimony in the case taken, and it must be published, unless the parties come to an amicable settlement. The proceedings in the session, in cases of discipline, have been extremely loose. In the rules adopted by the Broadway Tabernacle Church, in July, 1838, and unrepealed at this time, it is provided, that "in all cases of offence, discipline should be commenced, and proceed on the rule laid down in Matthew, 18th chap. 15—18 verses;" and that, "in cases of process against a member of the church, the meeting of the session shall be free to the entrance of any of the members of the church who may wish to hear the testimony and witness the proceedings." But the session did not observe these rules of the church. In the first place, they did not proceed as is enjoined in Matthew; and on the accused requesting them, when they should adjourn from the minister's study, in the Tabernacle, to hold their meetings in a place large enough to accommodate the members of the church who were desirous of attending, he was told that the session were not obligated to provide a room with reference to the accommodation of persons who might wish to attend, and that the session could, if they pleased, adjourn to six o'clock in the morning. It is natural to suppose that a session that will thus violate the rules of the church would not hesitate to trample upon the rights of an individual member. It will be allowed, that when the church has ruled that the meetings of the session, in cases of discipline, shall be free to the entrance of any of the members of the church, the session shall provide a place for their accommodation.—One would also suppose that the rules include the idea that it was intended that the church would be notified when cases of discipline should occur, that the members of the church might have an opportunity to be present. Yet members have been arraigned, since the adoption of the rules, and suspended from the church, without the members knowing anything of the matter, in violation of the spirit of the rules and the intentions of the church in adopting them. Such modes of proceeding, though heretofore common in the Presbyterian church, will not be allowable at the present day, especially by the New School division, and Presbyterianism cannot long survive such acts of tyranny in either New or Old School.

The appellant wished to examine the indictment. He would refer to the texts of Scripture—to the accusations—to the phrase "other slanders"—&c. &c., in view of the facts known to exist prior to the citation. Is not such use of Scripture a palpable perversion, and does not the offience charged recoil upon those who have thus attempted to drive the appellant from the Presbyterian church, under the forms of religion and ecclesiastical law? It is charged upon the appellant, that he endeavored to fasten upon Mr. Parker the imputation of inconsistency, in signing a paper containing a declaration or recommendation of Mr. Phelps's book, and *maintaining opposite sentiments at New Orleans*. This is a great error; he did not accuse Mr. P. of maintaining opposite sentiments, but of NOT MAINTAINING THE SENTIMENTS HE HAD PREVIOUSLY AVOWED. For saying this, and that he wished to have a minister who would be consistent, and not be like a vane, to indicate which way the wind blew, the appellant is gravely accused of the *crime* of calling Mr. Parker a WEATHER-COCK!*

* Several persons, it is said, are positive that the appellant used this epithet, and also said he considered Mr. Parker as the murderer of Mr. Lovejoy; but many others who were present are ready to testify that he said it only by way of implication. Whether he used the terms or not, the meaning of his language cannot be misunderstood.

Who is it, the appellant would ask, that frequently term certain ministers of the other school, *Doctor Weather-cock* and *Doctor Slambagus?*

It is asserted that the appellant declared that he was unwilling that his children should be brought up under the ministry of such a man, and yet the witnesses on the part of the prosecution affirm that he said he should be happy to sit under his ministry if the matters alleged could be satisfactorily explained &c. Allusion is made to a letter in the Liberator, written by the appellant. That letter was written for the single object of correcting a false report of his remarks—September 24th, which had found its way into the Liberator. A colored young man, belonging to the Tabernacle church, had procured some one to compose a letter pretending to give a report of the remarks of the appellant, full of improper language with regard to Mr. Parker, and the appellant's motive in writing a letter to the editor was to correct the slanderous statements made in the report. To be charged himself with slandering Mr. P. in a letter written in his vindication, seemed peculiarly unjust. The indictment refers to a correspondence in the year 1835 between Mr. Parker and the appellant. As the appellant lost all his letters in the great fire of December, 1835, he is unable to say what the contents of the letters referred to are.—He has asked Mr. Parker for copies, to be taken in his study, or to be taken at his expense under Mr. P's. direction, or to have the letters read to him, but he has been refused. Mr. P. saying, at one time, that he did not choose that he should have the advantage of him by reading them before they were produced at the trial. This is common practice, the appellant knew, in civil courts, but he had not before expected it in ecclesiastical courts.

These letters, thus withheld from the inspection of the appellant, are said to contain admissions, on his part, that he believed Mr. Parker did not sign the Declaration of Anti-Slavery Sentiments intelligently. It is probably the case. But such admission, must have been founded on the statements of Mr. Parker, or of other persons who professed to know the facts. When, however, the appellant became satisfied that he did sign the paper, with a perfect understanding of its contents, he had a right to say so, although, under a different view of the case, he had expressed a contrary opinion.—The appellant has had reason to believe that it is not intended to exhibit his letters to Mr. Parker in full, but he claims that the whole should be shown if any part is produced in evidence.* The indictment charges the appellant with saying Mr. Parker was the murderer of Mr. Lovejoy. He has no recollection of saying thus, and many, who are present, assert positively that he did not. He meant to say that Mr. P's conduct at Alton was, in his opinion, one of the chief causes that led to the murder of Mr. Lovejoy. With what grace does such a charge proceed from a Session, one of whom, Dr. Bliss, at the meeting on the 24th Sept. said of President Beecher, that he was a chief cause of the death of Mr. Lovejoy!

But if the appellant in any way slandered Mr. Parker why did not the moderator, Dr. Peters, call him to order? Would he have quietly sat and heard a brother in the ministry slandered? Would he have walked from the meeting arm in arm with the slanderer? And would the Session have omitted to take measures according to Scripture, to bring the offending brother to repentance, or suffered him to remain united for nearly three months, if he proved unrepenting? The appellant can see how the matter can be settled even now. Let the Session retract their charges. This will be true magnanimity; it will inspire confidence in them; it will regain the love of those members of the church who have been offended by their acts of tyranny; it will be agreeable to a majority of the church, who are against such oppression. Or the Presbytery can interpose, take the business into their own hands, hear the testimony, and pronounce judgment. Thus they will let it be seen by the religious community that even when a beloved ministerial brother has erred, they will not screen him; that they will not sustain a Session in the exercise of oppression. Such a decision will have great moral force, and cannot but be pleasing to the Great Head of the Church. But, the appellant hoped, if the case is remitted to the Session, that some principles would be settled in Presbytery so that the trial would proceed harmoniously, and on constitutional principles. He had aimed to act conscientiously, and prayerfully, and fearlessly. If for thus acting he was to have his name blasted, and to be cut off from the Church, he could only appeal to another and an unerring tribunal, and say with the deceased Bissell, when maligned by the ungodly, and ill-treated by professors of religion, "I thank God there is a day of judgment."

* In the Presbytery, Mr. Parker began to read an extract from a letter received from the appellant, and although called to order, he attempted to read it, until the remonstrance of the appellant was regarded by the moderator, who informed Mr. P. he could not read extracts without the consent of the writer. The appellant said he had no objection to Mr. P's reading the letter entire, but he chose not to read [illegible].

Call of the Roll in Presbytery.

The roll was called on the 15th. and 18th, Feb. as has been stated in the Minutes of Presbytery Nearly all the members gave their views of the case, for and against sustaining the appeal and complaint. It is not deemed important to insert them. Dr. Mason, among others, contended earnestly for the views he has expressed in the Minutes giving the reason of the Presbytery for not sustaining the appeal &c., and Messrs. Patton, Johnson, and Hatfield zealously and eloquently contended for a different construction of the Book of Discipline.

Minute of Presbytery.

Dr. *Mason*, Chairman of a Committee, reported the following minute, which has been already referred to in the Minutes of Presbytery, and is as follows:

The committee appointed to prepare a minute expressive of the sense of the Presbytery in the case of the complaint of Mr. Lewis Tappan, against the proceedings of the Session of the Broadway Tabernacle Church, and his appeal from their sentence excluding him from the communion of the church, report the following:—

The Presbytery having heard the appellant and the Session in the above case, decide, that neither the complaint nor the appeal can be sustained, for the following reasons, viz.

1. The complaint is from certain proceedings had in that Session, in a trial which is not yet issued and therefore cannot properly be before the Presbytery, inasmuch as by chap. 7. sec. 4: of our

Book of Discipline, a complaint is the removal of a *cause already decided*, from a lower to a higher court, and the Presbytery judge, that they cannot act in reference to these proceedings on the ground of complaint, until the case of which they form a part, shall have been decided by the lower court.

II. The appeal is not from any sentence pronounced as the result of a regular trial, but from a decision inflicting censure for contumacy or contempt, during the progress of a trial, not yet concluded.—The Presbytery judge, that such an appeal cannot be sustained for the following reasons, viz.

1. The decision appealed from constitutes part of the proceedings in a case, not yet issued. The whole sec. 3, chap. 7, of our Book of Discipline, show most manifestly, that an appeal supposes a regular trial, charges, testimony, &c., for it is one of the modes of removing not a single decision but a cause already tried and decided from a lower to a higher court. It is not contended however in this case that the sentence appealed from is the result of any such trial: on the contrary as appears from the records of the lower court, and from the appellant's own showing, it is part of the proceedings in an unfinished cause, and the appeal is not the removal of that cause to this body. Our whole Book of Discipline upon the subject of appeal and complaint, supposes that a cause must be issued, before any part of the proceedings in that cause can *in either of these ways* be brought before a higher court. If it be admitted that a person on trial, can arrest the proceedings of a court by an appeal from any of its decisions, at any stage of their progress, it is easily seen that he may if so disposed, effectually prevent an issue, by repeated appeals from any and every decision of the lower court, at any and every stage of its proceedings, a course, not only not contemplated by any part of our Book of Discipline, but carefully guarded against by its whole spirit.

2. The Presbytery do not consider the higher court as having the power to reverse a sentence, inflicting censure for contumacy, pronounced in a lower court. The common law always supposes, that every court has the power to punish by summary process for contempt of its authority. The absence of such a power, would leave every court at the mercy of any one, who might be disposed to trample upon it, and our book seems distinctly to recognise the principles of common law upon this subject, inasmuch, as while the power is given to lower courts to censure for contumacy, and while provision is made for carrying, *causes decided*, by appeal, to a higher court, there is no provision whatever, of this kind, in case of censure for contumacy. There is, indeed, abundant provision for carrying a decision or rule of the lower court, by which any one who may consider himself aggrieved, or which he may deem unconstitutional, before a higher court, but there is no such thing in our book as a contumacious person carrying, by appeal, a sentence inflicting censure for contumacy, before a higher court for its reversal. If a person is aggrieved he must submit even to an oppressive decision until he can have his grievances redressed in the regular manner, prescribed by our Book of Discipline and in accordance with its provisions, which seddulously guard the smallest right of any one on trial.

3. The Presbytery judge that to sustain the appeal in this case would be equivalent to saying, that the appellant was correct in the conduct, on account of which the censure had been inflicted, or if he was not correct, that the court transcended its powers in inflicting the censure complained of, neither of which positions, in the opinion of the Presbytery, can be maintained.

The ground of censure, as shown by the record, was contumacious conduct. Contumacy, as appears from our Book of Discipline, is disobedience to the rules or orders of a court. It may be manifested in a variety of ways, either by refusing to obey a citation, as in chap. 4: sec. 13: or by refusing to obey an order of the court, when appearing before them, as in chap. 6: sec. 16. Its nature is disrespect to the authority, or disobedience to the rules of the court.

That the appellant was thus guilty, the records show, and the appellant himself does not deny.—It is admitted that he resisted the decisions of the Session, and with one of their orders peremptorily refused to comply. The contumacy of the conduct does not in view of the Presbytery, depend upon the question, whether the order resisted was right or wrong—all that is necessary to constitute contumacy is resistance to the lawful authority of a court, and it matters not, whether the decisions of that court, are in view of the person whom they affect, right or wrong, constitutional or otherwise. That contumacy cannot be predicated of resistance to a rule, or decision supposed to be not constitutional or right is a doctrine to which this Presbytery cannot for a moment give their assent, making as it does a person on trial, the judge of right and wrong in his own case, setting him above the authority of the court before which he is on trial, thus striking at the foundation of all government, and tending when carried out to its legitimate results, to the subversion of every thing like order, and legalizes insubordination to constituted authority.—This Presbytery can never by any act give its sanction, to a principle at once so manifestly absurd, and in its consequences, so ruinous to the interests both of church and state.

Neither can the Presbytery say, that the lower court transcended its powers, in the sentence appealed from. That sentence was the infliction of censure by summary process: the only mode of punishment recognised in our Book of Discipline, for offences of this kind. The offence was committed in open court—it was disrespect to its authority and resistance to its rules, while in its constituted capacity—and while the Book of Discipline never hints at the necessity or propriety of citation previous to the infliction of censure for contumacy—in the present case there was no call for such citation. The design of citation is to bring the cited person before the court; but the appellant in this case was already before the court, and committed the offence in the presence, and directly against the authority of the court. The Presbytery cannot see how that court could have acted consistently, with what it owed to itself and to every other court of Jesus Christ, otherwise than by inflicting censure by summary process, and so long as the lower court did not transcend the power vested in them by Chap. VIII. (page 354) of our Book of Discipline, to exclude the contumacious from the congregation of believers, the Presbytery cannot interfere to stay the execution of a sentence, which the constitution allows the lower court to pro-

nounce, and of the proportion of which, to the offence, said court has the right to judge.

Finally, the Presbytery look no farther than the single appeal from, and complaint of, the sentence inflicting censure for contumacy, and express no opinion whatever as to any of the proceedings in the lower court during the progress of the trial which was arrested by this appeal, but they look upon the principles here violated as of vital interest to the order and well being of the church of Christ, and they wish in this decision to make known to the lower courts their determination to sustain them in the exercise of their lawful authority; and they cannot but believe, that the appellant in this case, when he shall have given these reasons of our decision, a calm and dispassionate examination will perceive his error, and return and submit to the authority resisted, in which case, propriety would require of the lower court, a removal of this censure, and a speedy and impartial issue of the trial now pending before it.

Appeal to the General Assembly.

On the 4th March the appellant addressed to Rev. C. S. Porter, moderator of Presbytery, his appeal to the General Assembly. As most of it will be included in his argument before that body it will be omitted here. He remarked that he appealed because the reasons assigned by the Presbytery do him great injustice, are inconsistent with each other, and are contrary to the Constitution of the Presbyterian Church. And in conclusion, said, "for the above reasons, and many more that might be enumerated, the appellant feels bound by his regard to his own character, and the interests of religion, to appeal from the decision of the Presbytery." The reason he appealed directly to the General Assembly, which sits in May, instead of the Synod, which would not hold its session until October, was, it is an intervening court, and in such cases the Constitution of the Presbyterian Church allows of appeals to the highest judicatory.

Committee of Conference.

The committee appointed by the Presbytery, with a view to bring the parties to a reconciliation if practicable, invited a conference at the house of Rev. W. Patton. The appellant attended, but the Session did not appear. The chairman of the committee, Dr. Mason, had separate interviews with the parties. Both professed a disposition to have the trial proceed, and there was no apparent obstacle in the way but an unwillingness on the part of the appellant to say he had *erred* in the course he had taken. He could not conscientiously say it, and the Session conceived they could not remove the sentence and proceed unless he would say this much. The committee therefore reported the result, and the Presbytery made the following minute.

> Stated Meeting, Bleecker-street Lecture Room, April 22, 3¾ o'clock, P. M.
>
> The Committee of Conference in the case of the Session of the Broadway Tabernacle Church, and Mr. Lewis Tappan, reported that they had attended to the duty assigned them, and regret that all their efforts to settle the difficulties in this case had been unsuccessful; which report was accepted and the committee discharged.
>
> The Commissioners to the General Assembly, together with the Rev. A. Peters, D. D. were appointed to defend the decision of Presbytery in the case of the Appeal of Mr. Lewis Tappan to the General Assembly.
>
> A true copy from the Minutes,
> Edwin F. Hatfield, Stated Clerk.

Preliminary Debate in General Assembly.

On Saturday, May 18th, the Report of the Judicial Committee was received and accepted, and it was moved that the consideration of the Report be made the order of the day for Thursday next. A debate, of some length, ensued. It was moved that the motion be postponed to allow the mover to move that the case be sent down to the Synod of New-York. After debate the question was put on postponement and agreed to, so that the further consideration of the case was postponed to Wednesday next. Some argued that there was no reason why this case should not take the usual course, and go to the Synod as the court next above that appealed from. Others contended that it was an *extraordinary* case, and that the judicial committee were decidedly in favor of its being considered. *Abran Stewart*, Esq. said he must say that the Presbytery seemed to have been in great error as to the American mind in supposing that such principles ever could be submitted to. Rev. *Dr. Fisher* said, if the principles said to have been the ground of the decision appealed from were to be established as the law of the Presbyterian Church, he had rather be anywhere else than in it. Rev. Mr. *Duffield* said the principles involved were perfectly new, entirely *sui generis*: such, in fact, as he had never heard or read of.

Remarks of Lewis Tappan in General Assembly on the motion to dismiss the Appeal to the Synod.

The motion to dismiss the Appeal to the Synod being under discussion the appellant asked permission of the moderator to state a few reasons in opposition to the motion. Objections were made from various parts of the house, but it was at length decided that the appellant had a right to be heard. He stated that his remarks would be short, and the result would probably be the saving of considerable time to the Assembly. He regretted, as much as any one, that a case of this nature should be brought before the General Assembly, having always been opposed to appeals going up above the Synod. But the circumstances attending this case are of a peculiar character, and require prompt action. It is a question of character and of constitutional principles. Were it a case of property, or of subordinate importance, he would not have taken up the time of the Assembly with its consideration. It is provided in the Book of Discipline, chap. 7. sec. 3. page 412. paragraph 6 that "Appeals are generally to be carried in re-

lar gradation, from an inferior judicatory to the one immediately superior." Now there have been many instances where appeals from Presbyteries to the General Assembly direct have been entertained, and where a session of the highest court has intervened, it has been considered proper to leap over the inferior court. The case is now before this court, and some disposition must be made of it. The circumstances under which this New School General Assembly meet, have encouraged the appellant to believe that the prompt exercise of justice might be expected from them. In addition to this, the remarkably kind feeling that appears to exist here, induces him to believe that the case will meet with more attention from this body than perhaps any body that may hereafter consider it. Should the case be sent down to the Synod it may take two or three years before a final decision can be had. He then stated the course it would probably take should it go to the Synod. He assured the house that the subject of slavery would not be connected with the case. No apprehension need be felt on that account. Nor did he expect that the merits of the case would be brought up. And, for his own part, he would endeavor that a great deal of time should not be consumed in the consideration of the case. He had intimated that important principles of church government were involved in the case. The question at issue is, can a person, guilty of contempt of court—called contumacy—be excluded from the communion of the church without opportunity of redress in the higher courts.

He said that if the case should be dismissed he should be under the necessity of publishing the facts in the case, as it could not be expected that he could remain quiet under the heavy accusations that had been brought against him, for so long a period. He had been advised to adopt a measure to bring about a decision in another way, and he had no difficulty in mentioning it, except that it might be supposed by some, that it was said in the way of a threat. It was advised by some Congregational ministers in New-England that the appellant should apply immediately to a Congregational church for admission; that a mutual council should be called; that they should notify both parties—hear the testimony and publish the result. If he should not do this, and the case went down to the Synod, it was probable that more time would be taken in the investigation of the case, before final issue, than if it should be taken up and decided now.

If the case is taken up, said he, the peace of the Tabernacle Church may be secured, and the community may no longer be agitated with the subject; great respect and confidence will be gained to this General Assembly; justice to both parties may be done; and the approbation of the Great Head of the Church may be secured.

The Assembly decided to take up the case for adjudication.

The documents in the case were read, including the citation, indictment, testimony on the part of the prosecution (so far as it was taken), the sentence, the minute of the session assigning their reasons for the sentence, the appeal and complaint, &c. &c. The appellant was then heard.

ADDRESS OF THE APPELLANT TO THE GENERAL ASSEMBLY.

Mr. Moderator:—The reasons for my appeal were drawn up in great haste, and under circumstances that induced me to suppose it might not be necessary to prosecute it. Some of the reasons, therefore, will be embodied in my present argument, but other and more important considerations will be presented. I requested a member of the court to assist me on this occasion, but he declined, for reasons that were satisfactory to me, and I have felt a reluctance to throw the burden upon any other member of the court. Besides, several have expressed a desire that the appellant would argue his own cause, thinking it would have more effect than to procure the aid of an advocate, however able. I feel sensibly the truth of the remark imputed to Lord Brougham, that the man who undertakes his own cause has generally poor counsel, and am relieved by the consideration that there are members of the court who will, after listening to the facts and statements that may be offered, supply my deficiencies, discuss, and decide upon the important subject before them as truth, righteousness, and the best interests of the church may require.

As the indictment, testimony, and statement of the Session have been read here, giving an *ex parte* view of the case, I claim the privilege of giving a brief statement of facts from the period when a negotiation commenced that resulted in the union of the Dey-street Presbyterian Church and the Broadway Tabernacle Congregational Church, to the present time. [As many of these facts are interspersed with the narration, in a preceding part of this publication, they will not be repeated.] I shall now proceed, Mr. Moderator, to an examination of the positions assumed by the Presbytery, and offer some thoughts on the constitutional points involved in the case. The case went up to that court by Appeal and Complaint, and I request the attention of the Assembly, in the first place, to the reasons of the lower court for not sustaining the Complaint. The Presbytery say, in their minutes, that, as "by chap. 8: sec. 4, page 414 (of the Book of Discipline), a complaint is the removal of a *cause already decided* from a lower to a higher court" the Complaint in question cannot properly be before them, because the case is not decided by the Session. To this I reply, in the minutes of Presbytery, Feb. 11, 1839, it is recorded that "the appeal *and complaint* of Lewis Tappan from a decision of the Broadway Tabernacle Session having been *found to be in order*, due notice was given by the moderator that the Presbytery were about to sit as a court of Jesus Christ." Thus, in the minutes, the lower court says the Complaint was *found to be in order*, and yet, in their reasons for not sustaining the appeal and complaint they aver that a Complaint from proceedings in the Session, in a trial which is not yet issued, *cannot properly be before the Presbytery*. After deciding and recording that the complaint was found to be in order, and hearing the parties in the case, is it consistent afterwards to say it cannot properly, or orderly, be before the Presbytery? The appellant thinks not, for if the reason assigned by the Presbytery be a valid objection to entertaining the complaint it should have been made at the outset—the appeal should have been declared, in the judgment of the appellant, *not* to be in order, and the case should have been sent back to the court below for trial.

With permission I will say a word or two on the *wrong construction* that seems to be put upon the passage referred to. It is true, as stated by

Presbytery, that "a complaint is the removal of a *cause already decided*," as may be seen by referring to chap. 7, sec. 4, page 1; but, in the following paragraph, [¶. 11,] a complaint is defined to be a representation respecting a DECISION by an inferior judicatory, which, in the opinion of the complainants, has been irregularly or unjustly made." A complaint, therefore, may be a representation respecting the *judgment* of an inferior court at the *termination of a trial;* or respecting a *decision* of such court, *during the pendency of a trial.* The word "cause," in the first paragraph, and the word "decision," in the second paragraph, being convertible terms, and both having reference to interlocutory, as well as to a final decision. The appellant is far from contending, however, that *he* could arrest the trial, and remove a preliminary decision from the Session to the Presbytery; but he does contend, that *on the arrest of the trial by the Session*, as well as at its termination, he could, constitutionally, remove the decision of the Session (that led to their arrest of the trial) to a higher court, by complaint. And he contends that this proceeding would be in strict accordance with the passage in the Book of Discipline where it is said, "a complaint is a representation made to a superior, &c. respecting *a decision* by an inferior judicatory," &c.

On the arrest of the trial the appellant took the only measure in his power to obtain justice, viz. an appeal to the Presbytery. That court ENTERTAINED THE APPEAL AND COMPLAINT, as will appear by their minutes already quoted. Had that body refused to entertain it, (and sent the case back for trial,) it would have been consistent for them to say, "it cannot properly be before Presbytery:" not otherwise.

II. The second point, Mr. Moderator, is this:—The trial was not arrested by the *appellant*, as Presbytery contend, but by the *Session*. The Presbytery decided, that in consequence of the interruption of the proceedings of the lower court, (by the appellant,) amounting to an arrest of the proceedings on his part, and his consequent precipitation of the sentence, his appeal ought not to be sustained. Their language is, "The appeal cannot be sustained, because chap. 7, sec. 3, says, 'An appeal supposes a regular trial,' &c." I ask the attention of the Assembly to the facts:—The appellant obeyed the citation; he procured the services of a short-hand writer, who was silently aiding him in taking down the proceedings; he frankly stated to the session, that all the proceedings would be taken down and go forth to the public in due time; no objection being made by any member of the session, nor the moderator, the first evening, but the moderator, on the contrary, Dr. Peters, requested that the short-hand writer might be allowed to take down his words without dictation: early during the second evening the session passed an order excluding the reporter, who immediately withdrew, and the trial proceeded. The appellant, after advising with Dr. Beman, requested the reporter to accompany him the third evening, and stated to the session that he was advised that the expulsion was illegal and grossly unjust—that he needed the assistance of the short-hand writer, that he might be able the better to prepare his defence—that he had found it very difficult to take down the proceedings after he had retired the previous evening, and needed him as a clerk—that he had no other way of preserving a record of the decisions of session which they omitted to place upon their records—that if he were denied the services of the short-hand writer, he should be, in his opinion, denied "a fair and impartial trial"—and, finally, that it was not his intention to publish the proceedings without being advised to by discreet friends.

The appellant also declared, that he would not yield the right to the services of the reporter, who should remain as long as he did; and that no power on earth should exclude him again, but by force. The appellant said, he stated his expressions here just as he had made them at the time, but he would not justify anything he had said that sounds threatening. He had spoken under very great provocation, and with feelings highly excited, though he had the judgment of many calm and judicious persons, who were present, that he did not forget himself, or the respect due to the court, but, on the contrary, manifested unusual self-possession and Christian temper, considering the circumstances of the case. The session then resolved, said the appellant, that he be excluded from the communion of the church for contumacy. They soon after appointed a committee "to prepare a minute, giving reasons for the decision of session in the case of Mr. Tappan," and adjourned. At their next regular meeting, three days afterwards, they made the following record: "Mr. Tappan presented his appeal and complaint to Presbytery, from decision of Session; which, on motion, was ordered to be placed on the minutes. Mr. T. having intimated a willingness to unite with Session in a call of Presbytery to *adjudicate his case*, it was resolved, that Session are prepared to unite with him for that purpose, at the earliest convenient time." The appellant said, it would be seen, from this narration of facts, that he did not arrest the trial, as was alleged by the Presbytery, who say, under the erroneous belief that he had arrested the trial, that if such a course is admitted, a person on trial may effectually prevent an issue. The appellant stated expressly, in his complaint, that he was willing to proceed to trial, and nothing is said to the contrary in the minutes of the Session. The fact was, he was very desirous that the trial should proceed, and considered it a great hardship that, after being cited for offences of which he was innocent, he could not have a speedy opportunity to record all the testimony and make his defence.

2. The appellant *could not* arrest the trial. His *declaring* that he would not proceed without the reporter's assistance, or actually declining to proceed on his part, did not, in the slightest degree, effect the *power* or the *duty* of the Session to proceed. THEIR DUTY WAS IMPERATIVE. After the incidental condemnation for disrespect, resistance or contumacy, the Session ought, the appellant contended, to have proceeded with the original cause. This they owed not only to the appellant, and the person said to have been slandered by him, but more especially to the Church.

3. The contumacious conduct of the appellant, as it was termed, consisted in his declaring, after the order of Session excluding the Reporter, that it was an unconstitutional act—that he needed his services to aid him in making a suitable defence—and with a view to publish the proceedings if a regard to his character and the interests of religion (in the judgment of discreet friends and members of the Presbyterian Church) required it. And in using some stronger expressions than might have been necessary, perhaps, in asserting his rights, when they appeared to be unconstitutionally invaded.

4. The appellant intended no disrespect to the Session—he positively disclaimed it at the time. He had been the oldest member of Mr. Parker's former Session, and all the members of the court were younger men than himself. Under these circumstances he spoke with great freedom—too much so, it appears, for the endurance of men so sensitive as to their dignity.

5. But if the appellant had been so rude as to be disrespectful—if he had used still stronger language in refusing to comply with the order of Session—and then had left the court, although either of these acts might have been punished by summary process, in proportion to the offence, they were insufficient reasons, it is believed, for an arrest of the proceedings by the Session.

6. The court, by arresting the proceedings, after passing a censure for what they deemed contumacious conduct on the part of the accused, were guilty, in the language of the Book of Discipline, as the appellant believes, of "hurrying to a decision before the testimony (was) fully taken."

7. It would have been more consonant to usage and propriety, it is acknowledged, for the appellant, to have been passive during the continuance of the proceedings, after the unconstitutional order had passed for the exclusion of the reporter, but he contends, nevertheless, that his resistance was not a turbulent but a peaceful one; it was merely *moral* resistance, and afforded no justification for an arrest of the trial by the court, or the harsh sentence pronounced by them.

8. It is an anomaly in jurisprudence, for a court to inflict punishment on an arraigned person for contempt of court, and thereupon to suspend further proceedings, and unite with the accused in removing the cause to a higher court. No instance of this kind is to be found, it is presumed, in the records of any court in this country, civil or ecclesiastical.

9. This act of the session, at once novel and oppressive, and over which the appellant could exercise no control, deprived him of the opportunity of taking up the case on the final decision.

10. If the appellant had actually been guilty of contempt of court, or even contumacy, the session could not constitutionally suspend the trial. This will appear from chap. 4: sec. 11, and 13, page 397, where it is provided, that if a person cited does not appear at the time appointed, (which is *contumacy*, according to the book of discipline) or if he shall declare in writing his fixed determination not to obey the citation, the judicatory shall proceed as if no such declaration had been made, and if he do not obey the order, the judicatory, beside censuring him for his contumacy, will proceed to take the testimony in his case as if he were present. The same course ought to be pursued when an accused person is before a court, and incurs censure in consequence of contempt of court. The *sentence* may be inflicted, but the *trial* should proceed.

11. The appellant said he was willing to rest this point here, believing he had shown conclusively that he neither arrested the trial, nor precipitated the sentence, nor forced his way to the higher court; but that, on the contrary, the session arrested the trial, and consequently that the presbytery had insufficient ground for declaring that the appeal ought not to be sustained.

III. The appellant, in the third place, asked the attention of the Assembly to his reply to the averment of presbytery, that his appeal from the decision of the session was not from a sentence pronounced as the result of a regular trial, but from a decision inflicting censure for contumacy during the progress of a trial, not yet concluded, and that an appeal, under such circumstances, *cannot be sustained* for the following reasons:—1. The decision appealed from constitutes part of the proceedings in a case not yet issued. 2. The presbytery has no power to reverse a sentence inflicting censure for contumacy pronounced in a lower court. 3. Sustaining the appeal would be equivalent to saying, the appellant was correct in the conduct, on account of which the censure was inflicted—or that the session transcended its powers, neither of which the presbytery thinks can be maintained.

As the presbytery have alluded to some of the principles that govern courts at common law, it may be well to go back somewhat further, and show the analogy between common-law courts, having equity powers, and the powers vested in our ecclesiastical courts. He apologised for stating these principles before a court composed of so many persons of great experience in civil and ecclesiastical courts, by saying he should not have presumed to do it, had not the presbytery strangely overlooked some of these principles. The powers of the ordinary judicial tribunals of the country are two-fold—common law and equity. The common law, by reason of its universality and the necessary unbending rigor of its rules, in particular cases, cramps justice. Equity comes in, and relaxes these rules that justice may be done. Common law and equity powers are exercised—sometimes by *separate* bodies of magistracy—and sometimes are united in the same person. In the latter case, the judge who gives judgment to-day, may as chancellor, enjoin or nullify to-morrow. Presbyteries are assimilated to common law courts, possessing equity jurisdiction. Their equity-jurisdiction ought to be guarded from curtailment more carefully than the same jurisdiction in an ordinary common-law court. The latter has to do, chiefly with the title to property—more easily ascertainable than *intentions*, or the exact character of motives, with which latter the Presbyteries are most generally concerned. The rules of proceeding in common law and equity tribunals are generally adopted in ecclesiastical courts, so far as they are applicable—not because they have any obligatory force *as such*, but because experience has shown that they are convenient for ascertaining facts, and deciding causes. If they should be found to defeat or obstruct justice, they ought at once to be disregarded.

Having stated these general principles, the appellant said he conceded that, as a general thing, Appellate common law tribunals (strictly such) do not entertain Appeals from inferior Courts, except on *final judgments*—so that they may have the whole case before them. But, considering that it was the act of the session, in the case under consideration, that deprived the appellant of the opportunity of bringing the whole case before the presbytery—he contended that that court ought to have interposed its equitable powers, and called upon

the session to proceed *to a decision*, allowing the appellant such clerical aid as he might deem necessary. As, however, they had declined doing it, the appellant, in the use of his constitutional privilege, appears before this court to obtain that justice that has been denied him in the Court below. No provision is to be found in the B. of D. authorizing the appellant to apply directly for a mandamus, requiring the session to proceed to *some* decision on the whole case;—unless, therefore, the present appeal is sustained, so far as the appellant can now see, his being relieved from his present situation must depend on the session's *choosing* to proceed. If it was incumbent on the session to go on with the trial, immediately after the sentence for contumacy was pronounced, without any reference to the appellant's refusal, or not, to have any hand in it, as the appellant contended, it was still incumbent on them at the time the presbytery refused to sustain the appeal, and it is incumbent on them at the present time. They were bound to proceed, in justice to the appellant,—for he has been suffering all the punishment he could have suffered in the principal cause had the decision been against him—and he has been deprived, by their not proceeding, not only of the opportunity of showing himself innocent of the charges on which he was primarily arraigned, and that the true grounds of his arraignment were very different from the ostensible cause, but of relieving himself from the penalties of the incidental sentence for contumacy. In this way, by the neglect of the session to proceed, and by the failure of the presbytery to command them to proceed, he is suffering unjustly, and, so far as he can see, *remediessly*. He neither has power to compel the session to proceed to final judgment, so that he can, if aggrieved, take up the case, nor to *repent* of his insisting on his right to have the services of a reporter—a thing in itself destitute of any moral quality, and, of course, not admitting of repentance.

The appellant complains further that the presbytery have declined pronouncing specifically whether the act of the session, requiring the accused to exclude the reporter, was constitutional, or not. Their language on this point is, they "express no opinion whatever as to any of the proceedings in the lower court during the progress of the trial"—although in a former part of their minute they declared that the appellant was guilty of contumacy. In view of these facts, the situation of the appellant, it must be allowed, is one of great hardship and oppression. It is true, it may be said, on the other side, that he could have relieved himself from this situation, the presbytery having, after their decision not to sustain the appeal, appointed a Committee of Conference, with a view to effect a reconciliation between the parties. It was thought that the session might be willing to resume the trial provided the appellant would acknowledge that he had been in *error* in contending for what he deemed his constitutional rights. But this he could not conscientiously do. Still he has been anxious to have the trial resumed, and even expressed his willingness to appear before the session, for that purpose, without insisting that the sentence should be repealed. His efforts were unavailing.

The appellant contends that as the whole case was brought before the presbytery, by agreement of both parties, for them to "adjudicate", they had a right to exercise their equitable powers for the furtherance of justice, inasmuch as the presbytery was the only tribunal which had authority to command the session to proceed to *final* judgment, from which the accused could appeal, and thus bring up the whole case. As further evidence that the presbytery possesses such powers the appellant refers this Court to that part of the Constitution which empowers Presbyteries to *redress the evils that may have arisen* in a particular church (page 359 of B. of D.) as well as "to resolve questions of discipline seriously and reasonably proposed."

It may be true, as is alleged by the presbytery, that the decision appealed from constitutes part of the proceedings in a case not yet issued, but the appellant submits whether it does not appear by the minutes of session, that the whole case was, by mutual agreement of parties, referred to the presbytery. The language of the session, already quoted, is, "Mr. Tappan having intimated a willingness to unite with session in a call of presbytery to *adjudicate his case*, it was resolved, that Session are prepared to *unite with him*, for that purpose &c," and in the minutes of the presbytery it is stated that they proceeded "to hear the *whole record* of the proceedings of the Session of the Broadway Tabernacle in the case, including *all the testimony*, and the reasons of their decision." And further—that the presbytery appoint a committee for the purpose of counselling with both parties to induce them to an amicable adjustment of *all their present difficulties*.

The appellant respectfully contends also, that it was the duty of the presbytery to notice any irregularity that occurred at the preliminary proceedings of the session, that tended to vitiate their subsequent proceedings. Chap. 3; Sec. 4. B of D requires that when any person is charged with a crime by general rumor the proper judicatory is bound to take "immediate cognizance" of the affair. In the present case the words, pretended to be slanderous, were uttered on the 24th of September last, and the citation was not issued till the 18th of December following, a period of nearly three months. The words uttered were spoken at a meeting of the church, *of* a person who was in nomination for the office of pastor, and *by* one who professed to speak not from unkind feelings, but from a sense of duty. The previous steps required by our Lord, were not taken with the appellant, from the time the words were uttered up to the time of citation. Neither did the person said to be slandered, or any member of the session, during the three months mentioned, ever interrogate the appellant with reference to the evidence he possessed of the truth of his declarations. And it does not appear that any step had been taken by the session to ascertain whether *Common Fame* did accuse the appellant of slander or falsehood, as charged in the indictment, or whether the charges proceeded from the rashness, censoriousness, or malice of one or more individuals who were deeply interested in procuring the conviction of the accused, and of wiping from the Tabernacle all stain of both his

name and principles. Now, the appellant contends that, under the circumstances in which this case was referred to presbytery, they had a constitutional right, and that it was their duty, to investigate those matters, and see whether the forms of ecclesiastical law had been observed by the court below, and whether the proceedings of the session had been in accordance with the gospel of our Lord Jesus Christ.

Again, the session, by arresting the trial, and uniting with the appellant in referring to the Presbytery, evidently intended that all their proceedings should be reviewed by the higher court. Unless they so intended, they should not have united with him at all, in the appeal, or after agreeing thus to unite with him, they should have recorded on their minutes, as the appellant believes, not that they united in a call of presbytery to adjudicate *his* case, but simply *the point at issue*, for his case was the whole matter in litigation. Besides, if the Presbytery had not understood that the whole case was referred to them, would they have proceeded to hear the *whole record* of the Session, including all the testimony? But if it be a good reason—as the presbytery contend,—for not sustaining the appeal, that the decision appealed from constitutes *part* only of the proceedings in a case not yet issued, the appellant can only say that, by the act of the session, in arresting the trial, he was prevented from appealing from a decision involving the merits of the whole case.

The presbytery declare that they have no power to reverse a sentence for contumacy pronounced in a lower court. "Contumacy," say they, "is disobedience to the orders of a court—it may be manifested in a variety of ways, either by refusing to obey a citation, as in Chap. 4: Sec. 13,—or by refusing to obey an order of the court, when appearing before them, as in Chap. 6: Sec. 16. Its nature is disrespect to the authority or disobedience to the rules of the court." Now, Mr. Moderator, it will be seen, on examining Chap. 6: Sec. 16, page 407, that the clause thus explained by the presbytery, does not apply to a *party on trial*, as they erroneously suppose, but to *witnesses* only. Besides, whenever a law mentions a particular class of persons, with no reference to any *other* class, the law cannot by any intendment, be extended to other classes. This is a clear principle.

The presbytery say, "There is no such thing in our book as a contumacious person carrying by appeal a sentence inflicting censure for contumacy before a higher court for its reversal." It may be that a person, censured for contumaciously *refusing to obey a citation*, cannot carry up to a higher judicatory, by appeal, the sentence for reversal—but this does not prove that an appeal may not be taken, on a sentence inflicting censure for disrespect to the court, by a party who *appeared*, and *submitted* peacefully to the jurisdiction of the court, making no resistance but one of a moral nature, and one that did not necessarily arrest the proceedings of the court.

Another point, Mr. Moderator. The case of contumacy in question, was in effect a *new* case. It is, substantially, unconnected with the case which was on trial. The conduct of the session made it a case *by itself*—to which *they* are *parties*. For, it should be understood, the person said to be suffering under the alleged slander of the appellant, did not require the reporter to be excluded. Both he, and the session too, might have had a reporter if they had so chosen. The presence of such a person had no more connection with the trial that was then on hand, than the presence of any one else who was in the room. The session had no more right to require the accused to dismiss his short-hand writer or reporter, than it had to require him to remove any other person from the presence of the session. If the session had, as they contended, the constitutional power to sit with closed doors, they could have prevented the occasion of contumacy in this particular, and have excluded the reporter by a general order, excluding *all* spectators. This they did not attempt, but sat with open doors. Could they then select an individual, and oblige him to leave the court, while other spectators remained! Could they designate the clerical assistant of the person on trial, and compel him to relinquish affording his aid to the accused, and to leave the presence of the court? It is believed not. No such arbitrary rule was ever before adopted by any court in a civilized country—at least not by any American court, civil or ecclesiastical. To the appellant such an act appears to be clearly unconstitutional and oppressive.

The reporter, or stenographer, be it observed, did not attend as a reporter for any *press*. His notes were subject to the control of the accused, who, although he at first avowed that all the proceedings would go forth to the public, yet afterwards stated explicitly that he should not make them public without the advice of discreet friends and fathers in the church. If, indeed, the power of the lowest court had extended to excluding the reporter, and the accused had *then* REFUSED TO PROCEED with the trial, he might have been justly seemed disrespectful to the court, and liable to punishment. Their power did not thus extend. Reporters have access to all open courts, and neither law, usage nor public sentiment will tolerate their arbitrary exclusion. In ecclesiastical courts reporters for the public press, even, claim the right of taking down the proceedings, and in no instance, within the knowledge of the appellant, has any attempt to eject them been successful. Or if the accused had insisted on having "professional counsel," to plead his cause, and had refused to proceed without them, here would have been a clear case of resistance to the authority of the court—a contempt. Why? Because the B of D. prohibits an accused person from using *professional* counsel. On this the Session could have acted, because it was *legal* for them to do so. Shall no difference be made, Mr. Moderator, between carrying out a *legal* power, and insisting *arbitrarily*, on what may seem to the court necessary for its dignity, irrespective of the rights of a party on trial? The doctrine would suit Star-chamber times—not the present. *This* General Assembly, at any rate, it is believed, will never sanction such a doctrine.

CONTUMACY means, in ecclesiastical courts, as has been already said, *refusal to appear*, and not an assertion of what an accused person, or his

counsel, deem constitutional rights, when the accused is *present* and acting in his defence, in opposition to the opinions and decisions of the court. No provision is made in the Book of Discipline for punishing contempt of court. The founders of the Presbyterian form of government could not have contemplated that religious persons would be guilty of disrespect when they had submitted to the authority of the courts—therefore they did not provide that an accused person should be cut off from the communion of the saints for a technical disrespect to the orders of the court. But in this case there was no contumacy nor disrespect of court. The appellant neither disclaimed the power of the court, nor rejected their authority as such. He merely protested against what he deemed an unconstitutional, an unusual, and arbitrary order of court, and declared his determination peaceably to resist it. He did resist it but, as was said before, it was simply a moral resistance.

The presbytery, in pronouncing that the appellant was guilty of contumacy, aver that this "the appellant himself does not deny." But this is a mistake on their part. He has not admitted that he was contumacious, either by refusing to obey the citation, or treating the court, when present, with intentional disrespect. He has indeed admitted that he protested against an order of the court, and the presbytery have thence inferred that he made the admission of contumacious conduct. So far from this he contended before the prebytery, as he does here, that the intention—avowed or silent—to resist an order of court is not criminal, nor can it be punished as an offence. The appellant's declaring that he would not go on with the trial if the reporter was excluded, was not an offence, and no punishment can be inflicted by a human tribunal till the act follows the intention. Even an incautious admission that he had been contumacious would not have made it so, as the court would judge from the facts before them. The case of contumacy then is a *new and independent one*, to which the session made itself a party. The session passed a *final* judgment on *it*;—therefore it was regularly before the presbytery by appeal. But, should this position be controverted, it was, at least, a case demanding extraordinary appliances by a court vested with equity powers, for the highest censure of the church was inflicted on a member for an act involving in itself no act af moral turpitude, and there was nothing to preclude such an understanding of the case that justice could have been done in the premises.

Mr. Moderator, the appellant must wholly dissent from the opinion expressed by the presbytery, that the higher court has no power to reverse a sentence, inflicting censure for contumacy, pronounced in a lower court, even if that censure extend to the excommunication of the accused. The presbytery assert, in effect, that however unjust, oppresive, and unconstitutional a censure for contumacy may be, the sufferer must submit—even if he is excommunicated from the congregation of believers—for supposed disrepect to the court—he must submit. This doctrine is so monstrous, that respect for the presbytery compels me to believe that they did not well consider its consequences.

I respectfully ask the attention of the Assembly to an examination of this doctrine. It is the dictate of common sense as well as of common law, that the proceedings of courts of inferior and limited jurisdiction, are to be rigorously watched by the higher courts. The presumption of law is that they may transcend their proper limits. If this were not so, appeals from their decisions would be considered as unnecessary. The view of the presbytery on this point, opens the door of every abuse to the very tribunal which, from the fact of its being the lowest, and the most exposed to improper influences, is supposed to be the most *liable* to commit abuses. The presbytery, in another part of their statement of reasons, seem to admit the right of an accused person—wrongfully sentenced—to resist, when they say that resistance to the *lawful* authority of the session, would be an act of contumacy. While the appellant admits the soundness of such a principle, he holds that proper resistance to the *unlawful* authority and unconstitutional decision, of an inferior court, will not be deemed contumacious by this judicatory.

Once more.—Contumacy is defined by the Presbytery to be "resistance to the *lawful* authority of the court," and in the same sentence it is asserted, that the contumacy of the conduct does not depend upon the question whether the order resisted was *right* or *wrong!* This is a remarkable contradiction and absurdity, for if the court is bound to restrain itself within the limits of *lawful* authority, it has no power *out* of those limits. What it does out of them is clear usurpation, and ought to be resisted by every one. A court is just as much bound *not* to trespass on the rights of the accused, as the accused is bound to respect their *lawful* authority. *More especially* should an *ecclesiastical court* be very scrupulous in allowing to the accused all the rights given by the civil courts, as it will be conceded by all, that courts of Jesus Christ should so conduct trials as to be examples to all other courts.

Another extraordinary assumption, on the part of the presbytery, is—that it is implied in their minutes that it is a constitutional act for the session to exclude from the congregation of believers, or, in other words, to excommunicate from the Presbyterian church, for CONTUMACY. This opinion will, it is believed, be deemed by the Assembly, a palpable misunderstanding of the constitution. The Book of Discipline gives no authority to any judicatory of the church to excommuniate a member for contumacy. On the contrary, the book goes throughout upon the presumption, that although censure may be inflicted upon an accused person, who is contumacious, the trial is to proceed. The appellant would cite chap. 4: Sec. 10, 11, and 13, pages 396 and 397, where it is expressly stated that in case an accused person, or a witness, refuses to appear, "the judicatory, besides censuring him for his contumacy, will, after assigning some person to manage his defence, proceed to take the testimony in his case, as if he were present."

Much confusion has arisen in the courts, in consequence of some of the expounders of ecclesiastical law misunderstanding and confounding the *terms* used in the Book of Discipline, and consequently no little reproach has been cast upon

that venerable book, as if it were a compound of contradiction and absurdity. It is true the terms in the book are not always used with precision, and may sometimes mislead the reader. In particular, the proper distinction between *suspension* and *excommunication*, does not appear to be preserved. The presbytery appear to have considered the following passages as intending and authorising excommunication. "The person found guilty shall be admonished or rebuked, or excluded from church privileges." Chap. 4: Sec. 17, page 298. "A sentence of suspension or excommunication from church privileges." Chap. 3: Sec 3, page 441. They seem to have thought that they were of similar import with the following: "Such gross offenders as will not be reclaimed by the private or public admonitions of the church, are to be cut off from its communion, agreeably to our Lord's direction, Matt. 18th chap. 17: and the apostolic injunction respecting the incestuous person, Chap. 4: Sec. 20. "But the highest punishment to which their authority extends, is to exclude the contumacious and impenitent from the congregation of believers" Chap. 8: Sec. 2, page 354. In proof of this, the appellant refers to what the presbytery have said, in justifying the session for their sentence of excommunication, (for such they have pronounced it, although the session did not mean, at first, to inflict such a sentence,) and, of course, themselves for not sustaining the appeal. They say they "cannot see how that court [the session] could have acted consistently with what it owed to itself and to every other court of Jesus Christ, otherwise than by inflicting censure by summary process, and *so long as the lower court did not transcend the power vested in them by Chap. 8, page 354, of our book of discipline, to exclude the contumacious from the congregation of believers*, the presbytery cannot interfere to stay the execution of a sentence, which the constitution allows the lower court to pronounce, and of the proportion of which to the offence, said court has the right to judge." The presbytery appear to have considered that suspension, or exclusion from church privileges, or from the communion of the church, and excommunication from the church itself, were the same thing; and still, by their other acts, that court implied that the person, thus supposed by them to be excommunicated, was yet under the control of the church.

It may be that their understanding of the sentence is correct, though it is apparent that their acts do not correspond with such an interpretation of it. The appellant believes that they have not rightly interpreted the sentence. It is for this Assembly to decide. The session, in this case, by their phraseology used in the sentence, appear to have misled the presbytery with regard to the degree of punishment intended. The sentence is, that the accused "be and hereby is *excluded* from the communion of the church for contumacy, till he give evidence of repentence," meaning, as appears by their subsequent acts, that he be *suspended*. The presbytery appear by their minute to have understood the sentence as inflicting absolute excommunication, though they overlooked the fact that the session had not pronounced the sentence in the presence of the church or congregation, as the book requires in all cases of excommunication—page 439. Since this interpretation of the sentence, the Session, or one or more members of it, have, at a recent meeting of presbytery, argued that their sentence meant excommunication, although they had not read the sentence in public, and have united in taking the testimony of a witness, offered by appellant, since the decision of the presbytery, with the view of proceeding with the trial hereafter.

The presbytery also, it is understood, have lately discussed the topic, whether the appellant had been actually excommunicated or not; and some of the members, report says, who voted not to sustain the appeal, under a belief that the sentence meant *suspension* only, have declared, in presbytery, that if the sentence means excommunication, they acted under a misapprehension, which they regret. The votes of such members, added to the votes of the minority, would, it is said, have given a different result; and were the vote to be taken now, there is no doubt the result would be quite different. The appellant believes there was no necessity for any member of the presbytery voting through misapprehension on this point, as on the motion to accept the report of their committee to prepare a minute, their attention was requested to this very subject. Whatever may be the right interpretation of the sentence, it must be allowed that the court that passed such a sentence, and the court that reviewed the proceedings, are not infallible. Such confusion of terms may not only lead judicatories to the infliction and confirmation of oppressive acts, and even to an enlargement of the punishment intended, but compel the party thus grievously wronged, to seek justice from the highest tribunal in the most speedy manner the constitution allows. According to the Book of Discipline, a contumacious person, be he a witness or party accused, may be "excluded or suspended from church privileges," while he remains a member of the church; or a person *convicted of offences*, may be "excommunicated from church privileges," or excluded "from the congregation of believers," which means absolute excommunication. The presbytery, therefore, in the view of the appellant, have greatly erred in supposing that Chap. 8: Sec. 11, page 354, authorised the session to excommunicate him for what they construed to be contumacy, and that in doing it, as the presbytery erroneously suppose they have, they have not transcended the power vested in them.

The presbytery were doubtless led into the error by presuming that the session had a constitutional power to excommunicate for contumacy. That point will now be more particularly examined. By referring to chap. 8: sec. 11: p. 354, where authority is given to judicatories of the church to "exclude the contumacious and impenitent from the congregation of believers," and *especially to the explanatory note* on the same page, it will be seen that the word *contumacious* is used respecting one with whom all the regular forms of trial have been pursued. In such a case, even when *the trial had been issued*, and the guilty person resists the decision, nothing more can be done by the court, according to this clause, than to exclude him from the congregation of believers, or the church, and to let him be "as a heathen man

and a publican." By referring also to book 11 : chap. 4 : sec. 13, p. 397, it will be seen that it is plain, that after an individual has been censured for contumacy, during a trial still pending, he is to be regarded as yet under the jurisdiction of the church. But this could not be if, during the pendency of the trial, he is excommunicated, and so henceforth to be treated "as a heathen man and a publican," over whom, of course, the church has no jurisdiction.

Again, Mr. Moderator, although the presbytery seem to take it for granted that the appellant is excommunicated, and assert that the infliction of such a punishment for contumacy, did not transcend the power vested in the session—yet, near the conclusion of their minute, it is assumed that the appellant is not excommunicated, but still under the jurisdiction of the church, for they say that "if he perceives his error and submits to the authority of the session, propriety requires of the lower court a removal of the censure, and a speedy and impartial issue of the trial *now pending before it.*" Besides, the presbytery, at the meeting when they adopted the minute touching this case, appointed the committee of conference with the view of bringing about a reconciliation between the session and the appellant, which they would not have done, it is presumed, if the appellant had been excommunicated.

The appellant is either excommunicated, or he is not. *If he is*, the presbytery were bound, as the appellant conceives, to decide upon the merits of the case and the constitutionality of the sentence appealed from, as in fact they have done though they do not admit it, by saying the lower court did not transcend the power vested in them by chap. 8, p. 354, although they proceed to say "they express no opinion whatever as to any of the proceedings in the lower courts during the progress of the trial." And yet, reasoning as if the appellant were in fact excommunicated, and therefore not within the jurisdiction of the session, the presbytery aver that the appeal could not be sustained. But if the appellant *is not excommunicated*, the trial ought, most clearly, to have gone on before the session, notwithstanding the censure inflicted, unless they considered the whole case carried up by consent. And the presbytery, it is conceived, ought so to have decided, and to have remanded the case, with an intimation to the session that their attempt to eject the reporter was unallowable.

Mr. Moderator, the opinion of the presbytery that "it matters not whether the decisions of that court (the session—the lowest judicatory in the church) are in view of the person whom they effect, right or wrong, constitutional or otherwise," would seem to regard as of no value the *rights* of individual members of the church when they are supposed to conflict with the *dignity* of a court. It is true, sir, that courts have in them the *power* to protect themselves—but it is a lawful power—not an arbitrary one which can, at pleasure, annihilate all individual rights. It is not despotic. Suppose the session had commanded the accused to conduct his cause *standing*, would it have been contumacious in him to have refused? But it may be said, this is an extreme case, and not to be presumed of a court. True, it is a case which may not occur, but not more unlikely than it would have been six months ago that a session of the Presbyterian church would refuse to one on trial, on charges going to the destruction of his character, the right to take down the history of that cause, as it advanced, by the aid of a stenographer.

The presbytery, in their minute, wish to make known to the lower courts their determination to sustain them in the exercise of their *lawful* authority. The appellant is among the last persons who would object to this wise resolution, or be an example of insubordination to the constituted authorities of the church, in the exercise of their lawful authority. Every one that loves the church, and respects its constitutional authority, must respond to this sentiment. On the same principle, every true Presbyterian ought, in justice to accused persons, and as he regards the dignity and character of church judicatories, and the cause of religion, to discountenance all *unlawful* authority —all attempts to indulge private resentments and a persecuting spirit. Especially should the higher ecclesiastical courts disapprobate usurpation on the part of inferior courts, inasmuch as sustaining them in the exercise of unlawful authority is calculated to weaken the confidence of the community in church judicatories, diffuse alarm among the flock of Christ, and prejudice the world against Christianity itself. At a crisis like the present, when the eyes of the whole people are fixed upon the Presbyterian church, and just alarm is felt at attempts to exercise extraordinary and extra-judicial power, it would seem that unusual care should be taken that the decisions of its courts should reflect honor upon its government, and be entitled to receive the approbation of the wise and good of every denomination.

IV. In the present case, Mr. Moderator, the appellant hopes it has been made clear to the apprehension of every member of this court, that the session transcended its constitutional power by attempting to exclude the stenographer—by excommunicating the appellant for an alleged act of disrespect—and by inflicting a sentence for other offences, not specified. The sentence is exclusion from the communion of the church for contumacy, in refusing to submit to the order of session in relation to retaining a stenographer, and *refusing to submit to other decisions of the session.* Such a sentence, it is believed, is an anomaly in jurisprudence, civil or ecclesiastical, and constitutes in itself a sufficient reason why the presbytery should have sustained the appeal. By refusing to sustain it, the presbytery appear to have sanctioned the unconstitutional acts of the session. What moral force, Mr. Moderator, can decisions have that are, as in this case, contrary to the constitution and contrary to plain principles of equity and justice!

The presbytery say, indeed, that if the appellant conceived himself wronged by the decision of the session—while he submitted—he could "seek for justice" in a higher judicatory. And yet they say that no appeal is allowable from a decision inflicting sentence for contumacy! The lowest court then may affix the term *contumacious* to the conduct of a person on trial—no matter on what charges—and sentence him to the highest punishment they could inflict, provided he *had been convicted* of the most flagrant offences,—and the presbytery—while it

proclaims that the individual wronged can *seek* for justice before it—refuses *to do* justice to the appellant, What mockery is this!

V.—The appellant considers it his right and duty to appeal to this tribunal, because the presbytery refused to pronounce that it is contrary to the constitution of the Presbyterian church, and the word of God, for a member of the church of Christ, who had not been convicted of any immorality, to be excluded from the Lord's supper because he was thought disrespectful to the officers of the church—as if an offence against his brethren was a crime of sufficient magnitude to justify his exclusion from the company of believers on that interesting and solemn occasion. In Chap. 31, Sec. 1, of the Confession of Faith, it is intimated that ecclesiastical courts are appointed for *edification* and not for *destruction*. Cutting a member off for an offence not immoral, and under the circumstances in which the appellant was placed, seems to be reversing this rule. Such tyrannical acts, if unrebuked, will drive thousands from the Presbyterian church, and compel many to resort to civil courts to seek for justice denied them in courts of the Lord Jesus Christ. The tyrannical act is the same, whether the wrong be done to an individual or to an ecclesiastical body—whether the act of excision be performed in the case of offending Synods or private members of the church. Neither the Book of Discipline nor the word of God, authorises excommunication from the church except for *crimes*—not the crime of wounding the pride of a fellow-mortal, or offending his dignity, in the pursuit of Constitutional rights—but crimes in the sight of God—such as can be *proved* to be such from Scripture.

Mr. Moderator, in conclusion, I think it a providential circumstance that this case comes before the constitutional General Assembly at a time when *they* feel that they have been the victims of oppression. An appeal from a decision of an inferior court, over which this court has control, at this juncture, on account of unconstitutional and oppressive acts, and infringements upon christian liberty, will surely be considered, with unusual attention, by this reverend and venerable body. The alarm that the decisions of the inferior courts have created, in various parts of the country, in this case—an alarm that has awakened apprehension that the organization of the Presbyterian Church favors tyranny—be the government vested in the old school or the new—has given to this case unusual importance. I consider myself, therefore, as the representative of *all* the members of the Presbyterian church who may be contending for constitutional rights, and I devoutly pray that, under the Divine guidance, this court will, in its decision, award justice to the appellant, while those great principles will be sustained for which the Constitutional Presbyterians have been contending with partial success.

Address of Rev. A. D. Smith.

[*Abridged from the "New-York Evangelist."*]

Mr. Smith, on behalf of the *Third Presbytery of New-York*, said, this is a novel case. Important principles are involved in it. You never had an appeal before from our presbytery. We have been very peaceable and orderly from our youth up. We shall be obliged to use what may be regarded as strong language. We have no unkind feelings toward the appellant. But we believe he has erred greatly. We did not intend to touch the original case. "Why, then, allude to the testimony?" it will be asked. We believe that the facts of the contumacy were so interwoven with the taking of the evidence, that there was no other way of arriving at it than by reading the whole record. We were afraid of doing Mr. T. a wrong. The presbytery gave no opinion as to the *original case*. The sentence for contumacy, and that alone, was before us. We dismissed the appeal on two grounds: (1.) That he had no right to appeal in that stage of the proceedings. (2.) He was contumacious, and liable to the censure inflicted.—Presbytery did not decide the case merely on the ground that no appeal could be taken from a sentence of contumacy. Contumacy and disobedience to the court may be manifested in many ways. That the appellant was thus guilty, the records show, and it is not denied. The second point in the reasons assigned by the presbytery, was, that the appellant was contumacious, and deserving of censure. If we show that on one ground our conclusion was right, we have gained our cause.

[Here he proposed to introduce a paper, dated May 11th, which had been sent to the commissioners by the session, and put into the hands of the judicial committee, but which they rejected, stating that the appellant had *resisted the sentence*, by voting at the annual meeting of the church and congregation "on church business," viz: in the election of trustees, and on accepting the annual reports of the session, deacons, and trustees. A member of the Assembly objected. Mr. Tappan hoped it would be introduced. After considerable discussion, it was decided that it was inadmissable, even with the consent of parties. Mr. Smith proceeded.]

On the second point, the question whether the appellant was contumacious, there are three points: (1.) Was he contumacious? (2.) Was summary process proper? (3.) Was the sentence proper? Mr. S. here defined contumacy from Webster and Blackstone. He also examined the testimony to show that the appellant was contumacious. If he had come in and said he wished to have the aid of the stenographer, no objection would have been made; but he came *in terrorem*. It was his declared intention of making the proceedings public, if he saw fit, that led to the exclusion of the stenographer. The session had the right to sit in private. If they might exclude every body, they might exclude a portion. Does not the greater include the less? If they have the right to shut the door fully, have they not a right to shut the door partially? Suppose a drunken man should come in, &c.—The appellant admits they might have excluded all. [The appellant said he did not admit it.] No matter whether he admits it or not. What did our fathers, when there were no short-hand writers? What do our country sessions do? Must a man send 400 or 500 miles to the city, that he may have justice done? Civil courts do exercise the prerogative of forbidding stenographers taking notes.

The third point under this head is, that his conduct was such that they could not proceed with the trial. He was so turbulent as to render it impossible to proceed with the trial. He made popular appeals to the spectators. The session did not

unite with him in the appeal. They did not have the slightest idea that the whole case was to come up to presbytery. He said we entered into the whole testimony. We did hear it read, so far as it had gone, because the facts of the contumacy were intermingled with the testimony. Presbytery granted an indulgence to the appellant because they would be careful of his rights. Now he comes here, and takes advantage of this indulgence to charge the presbytery with doing him injustice. He comes here, and on our lenity makes an argument against us. The fourth class of contempts, is the approbious language used by the appellant. Mr. S. quoted several expressions.

2. The second point in the case is: "Is summary process proper?" It is always proper for contempt of court. The court is supposed to know all the facts and the party is before them; so that there is no necessity for citation, witnesses, or trial.

3. The last point is: "Was the sentence proper?" Was it too severe? It is the very sentence the book prescribes. It says he should be excluded from the communion of the church for contumacy. This is the sentence which the book prescribes for offences committed out of court, which are treated more lightly. The presbytery understood that it was not excommunication. The offence was committed deliberately, and from day to day. The very lowest retraction would have been received, and the trial suffered to proceed; and would now be.

Will you sustain a man in such a course? If so, order will have fallen in our streets. We plead, not because we would injure the brother, but because we would do him good.

ADDRESS OF REV. ERSKINE MASON, D.D.

[*Copied at length from the "New York Evangelist."*]

Mr. Mason, also, appeared on behalf of the presbytery and session.

It is painful, said he, on account of the very friendly relations existing between the appellant and myself, for me to appear here against him. I do not know that ever an unkind word passed between us. That the appellant has always had my confidence as a Christian, he knows. That I have his, he confesses. Under these circumstances, it is very painful for me to appear here; but I do it in the performance of a duty I owe to the court below; and I do it in defence of what I deem right principles. I think the court below could not have acted otherwise.

I shall confine myself to the principles of law involved. Presbytery took up the case, and the first inquiry was: "Was the appellant contumacious?" Having decided that question, and decided it in the affirmative, they took the stand that they could not reverse the sentence. Before I go into the question of law, I wish to allude to some things which fell from the appellant's lips during his argument. It has been said that the session were unwilling to proceed, and wanted to get rid of the appellant. The session were willing to do every thing that was right. The reason they did not proceed may be resolved wholly into the act of the appellant himself. I was one of the committee appointed by the presbytery to confer with these parties. When I spoke to the members of the session they said, "We do not believe you will ask us to do anything wrong." When I spoke to the appellant, he said, "I do not believe you will ask me to do anything wrong."

I discovered that there were two points, on which a little concession by the appellant, on either of them, would settle the difficulty. The first was, that, if he would say that, in such a public meeting, it was unjust for him to make such statements, the whole case would be dropped. Again, if he would only say that he had committed a mistake—not, that he was convinced that he had done anything morally wrong, nor to give up any constitutional right—the trial might have gone on and been issued.

Now, as to the question in law. It has been stated that the presbytery refused to sustain the appeal, because the appellant was contumacious. That he was contumacious, we decided. The question is, whether, on the supposition that he was contumacious, the presbytery had a right to sustain the appeal, and reverse the sentence. We say it was not in order for them to sustain the appeal. This seems to have produced a very unfavorable impression on the minds of some members of this house. It seems to me that this impression has grown out of a misunderstanding of the grounds of the decision of the presbytery. What do we say? We do not mean to say that the smallest right may be trampled on. We mean to say he has redress for every grievance. We do not mean to say that an accused person has no right to resist a decision of the court. We believe that he has. If the decision is wrong, it is not only his *right* but his *duty* to resist it. We go further than the appellant. We say he has a right to resist it, even if he *thinks* it wrong. But here is the point: we differ as to the proper *mode* of resisting it. This distinction is to be kept continually in view. The lower court is a legally constituted tribunal, which has a right to pronounce decisions. There are two ways in which a man may resist a decision of this court. One is, by taking that decision before a higher court. This, every individual has a right to do. One wrong decision is enough to reverse all the proceedings. Another way is, to take the law into his own hands, and say he will not submit to that decision at all. He says to the court, "You may try me, if you will allow me to lay down rules for your proceedings." I can easily see that there may be some cases where this mode of redress may be right; where an individual has endeavored in vain to get redress, I suppose a man has a right to resist; but not when there is remaining one legal mode of redress. But the true question at issue is, whether, after having resisted, and set himself up above the court, a higher court can listen to his appeal. If he has a right to resist the lower court, he has a right to resist this. I am happy to know that the presbytery are not alone in the ground they have taken. This is in accordance with the practice of civil courts. There is a case in Johnson's Reports, where J. Van Ness Yates was imprisoned by the Chancellor for contempt of court. He did not appeal, knowing that no appeal would lie. But during the vacation, he applied to a Judge for a writ of *habeas corpus*, on which he was discharged. The Chancellor, hearing of it, remanded him back to prison. The case was carried up to the Court of Errors, and they decided that the case could not come up; and the chancellor has repeatedly de-

cided that he could not hear a case coming up from the lower courts, till the appellant had purged himself from contempt.

It seems to me our own book is in accordance with this. You cannot find anything like provision for appeal from a sentence for contumacy. What would we think of a witness who should come up here with an appeal from a sentence for contumacy, for refusing to obey the orders of the court? We should tell him to go back, and submit to the court. I wish it distinctly understoood, that presbytery have not said, as the appellant affirms, that it is "no matter whether the sentence is right or wrong." But they have said that it is no matter, so far as the question of contumacy is concerned, whether the decision resisted was right or wrong. To that decision he must submit, for the time being. Till it is reversed, it stands, no matter whether the decision was right or wrong, legal or illegal. Their decision may be reviewed, but not by the acensed.

The appellant admits that resistance to the lawful authority of the court is contumacy. What is *lawful* authority? It is the authority of a lawful court. Its decisions are binding until they are reversed. The appellant admits that it is no matter whether it is right or wrong in view of the accused person; but contends, that when wrong *in fact*, the accused may resist. But who is to be the judge whether it is right or wrong?

After all, it may be said, "This is a very hard case." If we are wrong, assuming that he was contumacious, then we admit that our decision falls to the ground. But then, what are the means of redress? Simply for that brother to admit the lawful authority of that court—for him to say only that he made a mistake. The question is now, not simply whether Assembly will protect the rights of individuals, or whether they will protect the courts below—whether any man may come and say, "You may try me if you please; but I must be judge, whether your decisions are right or wrong."

Dr. Peters, who was also appointed by the Presbytery to respond in the case, said he was satisfied with the case, as presented by his associates, and he should not occupy the time of the court with any remarks, unless it might be necessary to make some explanations, after Mr. Tappan had replied.

Reply of Appellant to the Respondents.

After the respondents had completed their remarks, the appellant rose to reply. He said there were a few points only which he wished to notice. It was said by Mr. Smith that I threatened session that it would take the remainder of the month of January to examine the witnesses on the part of the prosecution. Yet this is not the whole of what he said. Mr. Smith was not there, and the facts are not within his own knowledge. I stated, in the presence of the Session, that when I made that declaration I had it in my mind that they would only hold their usual weekly meetings. I made the same declaration in the Presbytery. I did not suppose they would sit every day. Will any one, who knows my pursuits, suppose I would needlessly spend twenty or thirty days before the Session? Again—he says that I threatened the court that my witnesses should not retire, during the examination of witnesses. The persons present, as my friends, were not *witnesses* till they had been *cited* as such. Suppose in a court there are hundreds of spectators—are they all to be excluded because a few of them may be called by the accused during the trial as his witnesses? Not a person was present who had been cited as one of my witnesses. I had given in the names of eight or ten persons to the clerk, but he had not cited them. Five of the persons who sympathised with me were deacons of the church, and there were many members of the church present. There was considerable excitement, and they had a strong desire to be present. I told them they need not retire, for the order excluding them was unconstitutional. I took the liberty to tell them that the Session had no power to exclude them, and advised them to stay.*

It has been said that the Session intended to exclude the stenographer for my benefit—lest the publication of the proceedings should injure me. Suppose I am arraigned for a crime, and convicted, and knowing that I am innocent make arrangements to procure the proceedings for publication. Will a court interpose to prevent the publication, lest it should injure me? Although the book restricts *them* from publishing the sentence, they have no right to prevent me. If, by publishing it myself, injury is done to my character, it is my own affair.

The gentleman says, if I had asked permission *respectfully* the reporter would have been allowed to remain. It may be so—if I had treated them with a little more reverence—they might have condescended to allow me to retain the reporter. As a matter of favor they would have allowed me what was an undoubted right! I was not, perhaps, so courteous as they deemed necessary, but, on the contrary, a little plainer spoken than an accused person ought to be before a dignified court. I admit that I spoke freely and plainly, but that I spoke disrespectfully, with an intention to be discourteous and disrespectful, I utterly deny. Neither have I been disrespectful or unkind to Mr. Parker. I have asked him if I had treated him with unkindness, and he said I had not. But my offence consisted in this—that when the moderator made many decisions which I thought unconstitutional, I protested against the proceedings—and thus came in contact with their dignity—was not this allowable? It is said I was "turbulent." Suppose, Mr. Moderator, you, and twenty members of this body should go before the Old School Assembly, were contending for your constitutional rights, that thirty or more unconstitutional decisions were made, and, when you complain and protest, you are told to sit down, your words are recorded against you in a garbled manner, and you are goaded continually, would it be in human nature for you to sit down quietly and submissively under it? I ask if the scene that occurred at Ranstead Court speaks no admonition on this subject? Sir, if that Assembly had you and the other members of this body at their bar, they would convict *you* of contumacy; nay, they would go farther, and exclude you from the church, as the Session did me. One part of my offence consisted in this—that, when the moderator would not have the reasons of his decisions recorded, I said that great or monstrous injustice was done me. They did not put down the reasons for their decisions, though the book expressly requires it. Again, I asked for a commission to take the testimony of Messrs. Phelps and Mahan; they refused it, and ruled that the testimony was irrele-

* By a rule of the Church, all the members have a right to be present in all cases of discipline.

vant. I asked that the reasons of their decision might be recorded, and it was refused, the moderator saying it was a question of order! Mr. Mahan's testimony has since been taken by mutual consent.

It has been said the *ex-parte* documents were read in the Presbytery for my sake, and that I now ungratefully bring it as an accusation against them. "It argues," said Mr. Smith, "I will not say what." It is a mistake. I never brought this accusation against the Presbytery. I did not object to the reading of the testimony, but the *indictment*. Sir, I object to the insinuation of the gentleman—"it argues—I will not say what." Why does he not speak out plainly, if he has aught against me, and not deal in innendoes?

The respondent, Mr. Smith, has named sundry expressions that he says I uttered before the Session, as proofs of contumacy. And he has, by gesture and emphasis, endeavored to give them peculiar point and significance—"Dare not bring David Hale to testify,"—"Trying me for matters not intended"—"Outrageous injustice, &c." I complain, Sir, that phrases uttered on the trial have been quoted without the accompanying qualifications, or the connection in which they were spoken, as evidences of contempt of court. The Session did not record all these expressions at the time, but after they had pronounced me contumacious, and when their committee came to sum up the reasons for the sentence, they gathered up all the offensive expressions used during the trial, that they could recollect. One remembered this expression, and another that expression. It is true I used the expression, "outrageous injustice," but not without qualification. I rose and said, "Mr. Moderator, I say it with perfect respect, but outrageous injustice has been done me, by the Session refusing to record the reasons of their decisions." Now I acknowledge that it would have been better to have said, *very great* instead of *outrageous*, but will it be gravely urged that the difference between these modes of expression, constitute an offence for which a person should be excluded from the communion of the church?

With regard to the remarks of another respondent, (Dr. Mason, whose deportment throughout, in this matter, has been that of a friend, a gentleman, and a Christian,) he said the Session did appear before the committee of conference. It would have been more accurate for him to have said that he, as chairman of the committee, appeared before them. The facts are these. A meeting of the parties was notified to be held at Dr. Patton's house. I attended, but not a member of the Session. They said they did not intend to go.—Why do they not come to the study in the Tabernacle? said they. Their pride was offended at being notified to meet the appellant, on equal terms, at the house of one who had voted to sustain the appeal. There never was a meeting.—Dr. Mason went to each party, and tried, by negotiation, to effect a settlement. I did hope, at one time, that the matter was so far settled that the trial would proceed. We tried to write a note to the Session that would be acceptable, and such as I could conscientiously sign; but on advising with judicious friends, and hearing remarks that had been made by members of the Session, I was satisfied that the least concession would be misunderstood or mistated, and therefore declined making any. Now, Sir, I mean no accusation against the Session in consequence of the ill success of the committee of conference. They might have supposed it necessary to humble me. I leave it to others to impeach motives.

The respected respondent says further, that the appellant said he would not submit, and that he confesses that he put himself above the Session. It is true that I declared that I would not submit to any punishment they might inflict—no, not the weight of a feather. But I meant not this offensively—I meant that if injustice was done I would appeal.—I deny that in any other sense I put myself above the court. The respondent says, all that I have to do, is to submit myself to the lawful authority of the Session. The state of things is not known here. It was declared before I was arraigned that they meant to "cut my head off," or words to that effect, and I have it from good authority, that Dr. Peters has said, in effect, and with laughter, that for some expressions used by me before the Session, they had passed snap-judgment upon me.—(Dr. Peters denied that he had said any such thing, and the appellant asserted that it was mentioned to him by a member of the Assembly.)

Rev. A. Peters was heard. He remarked that it had been said that the moderator of the Session made many wrong decisions, and refused to record the reasons. These decisions were all on questions of order, the reasons for which the Book does not require to be entered. He stated and read the rule at the time. The reasons for all decisions, except on questions of order, were recorded at length.* The appellant was very difficult to manage. He took exception to every thing, and raised points continually, which taxed his, Dr. P's, ingenuity to the very extent. To have given the reasons at length would have made a volume of 100 pages. He brought up 56 *wrong decisions*, as he contended before the Presbytery.—Dr. P. said he heard Mr. T. several hours, and yielded every thing he could, and he has never had any thing but kind feelings towards him. [Dr. P. was going on to state some things respecting the appellant's conduct before the Session, when the moderator decided that he could not be permitted. He yielded, and said he should claim the right of speaking in his place, as a member of the lower judicatory—when Dr. Cox, moved that Dr. Peters has no right to speak as a member of the lower judicatory, after being heard as respondent, which motion prevailed.]

* The decision that the testimony of Rev. A. Mahan, and Rev. A. A. Phelps, which the accused declared was of great importance, and necessary to his exculpation, was decided to be a *question of order*, and therefore that the *reasons* for the decision should not be recorded! It was very convenient, doubtless, to pronounce every question a question of order!!

Opinions of the Members.

The opinions of a large number of the members have been published in the "New York Evangelist" of June 8th. It was the intention of the appellant to have copied them entire in this publication, together with the opinions of those who were omitted in that paper;* but there is not room, and he regrets it the less as he is fully persuaded that most of the respected ministers and elders, who on the *ex parte* view of the subject in the General Assembly, censured him, with more or less severity, will, on perusing a full report of all the proceedings, acknowledge that he was not obnoxious to great severity of remark in consequence of any thing he said or did when on trial before a court composed of men who had not hesitated to avow, openly, that it was their wish and determination to destroy his influence, if not to drive him from the church. Still, the appellant does not wish to defend any thing that he said or did that may be deemed justly censurable. The following remark of Rev. *C. E. Furman,* was the opinion of a large number, variously expressed, "it has been difficult to say, even admitting that the charge is made out, whether the contumacious conduct of Mr. T. was worse than the cruelty and oppression of the session, and afterwards the presbytery." Subjoined are the opinions, at length, of four of the members who were for sustaining the appeal, and who, with many others, notwithstanding the case was necessarily, as it were, presented to them — on an appeal from a decision in an unfinished cause — in an *ex parte* manner, seemed to comprehend its merits, and award justice to all parties.

Alvan Stewart, Esq., conceived it to be the inalienable right of an accused person in our country, who has character, life, or liberty at stake, when arraigned before any human tribunal, to keep minutes of any evidence brought against him; and the person who feels unable to do his own writing, has a right to make use of another man's hand, who is peaceable, quiet and still. He has just as good a right to use another man's hand as his own; and in entering the church, do I surrender that right, so as to allow the court to take away the liberty of recording evidence? I suppose if the court were to say, you must stand up, or stand on one leg, or take off your coat, resistance would be duty. I have often paid a man five or ten dollars to take down notes for me during a trial, rather than do it myself. Mr. Tappan had a right to do the same. Suppose he had undertaken to take notes himself, and they had ordered him not to do it: the case would have been the same. A spirit of inquiry is abroad, and I know the country has been shocked with the idea that an accused person was denied the benefit of a reporter.

During the reign of Charles 2d, when Lord Russell, eldest son of the Duke of Bedford, was brought to trial, he was treated with great cruelty and even denied the benefit of counsel. He told his wife, who was a lady of remarkable piety, that he had one request to make of her. He wished her to intercede with the court, to allow her to be his stenographer. She went; and hard as was the heart of Jeffries and Popham, — under the notion that a man and his wife are one, they said that he might have his wife for a stenographer, because it was his own hand.

I say Mr. Tappan did right to resist the order for the exclusion of the stenographer. The reason why the court erred was, that they broke in upon one of the inalienable rights of Mr. Tappan; and in doing so they went out of their jurisdiction. Then they ceased to be a court of Jesus Christ. There is the point that satisfies my conscience in sustaining the appeal. Perhaps some of my brethren may think the session have made out a clear case of contumacy, by those expressions which they have gleaned up so industriously. Brother, have you ever been in similar circumstances? I have had so many clients I know something about this. Are we to pick up sentences, scraps, pieces, of what a man says under excitement, and bind them up together, and make an accusation against him? No man would be condemned in such a manner in the civil courts. We say to the courts every thing with great plainness. It is the *intention* which is to be looked at. Who hath not slipped with the tongue! It is a most dangerous thing for a man to attempt to argue his own cause. I could take a man of warm temperament, and make him say enough to cut his throat. I have no doubt both sides were in error.

As to the court above, they have given some reasons for their decision, which I declare I cannot submit to. They say, whether the order of the court is right or wrong, there must be no resistance. If that doctrine prevails, it is putting human liberty down to the lowest point. Let those dreadful principles be carried out, and a man will always be cut off in a heat; not so much for what he was guilty of, as for his conduct during the trial. I shall sustain the appeal.

Rev. *Peter Lockwood.* In my view there are three errors on the subject of contumacy: (1) That there may be contumacy where the order of the court resisted is illegal, making no distinction between right and wrong in the case. We be to us, as a General Assembly, if this doctrine is to prevail. It strikes me that we are acting contrary to the orders of a moderator; and if we were within the power of a certain body, we might, on this principle, all be suspended for contumacy. (2) Another error is, that there is no difference in the heinousness of the offence. (3) That, from a sentence for contumacy, there is no appeal to a higher court. I shall act on the opinion that there is an appeal; and that the appellant has a right to show whether his conduct was justifiable or not, or whether there were circumstances of palliation. It strikes me that Mr. Tappan had a right to retain the stenographer in court; that the order was unjust, and he did right to resist it. As to the other matters alleged as contumacious, it appears to me that he was provoked to utter these expressions by the circumstances in which he was placed. Taking up the case so long after the alledged offences, and just after the notice in regard to slavery, looks suspicious. Another thing, —

* Most of those who gave their opinions, after the reporter for the "Evangelist" had left the Assembly, were in favor of sustaining the appeal.

the resolution of the session to record a certain remark, as evidence of a litigious spirit,—it looked strange to me, that after an individual was called into an ecclesiastical court, and litigation commenced against him, they should be looking out for evidence that he was litigious. It looked to me as if the court had prejudged his case, and had begun to think how they might justify themselves. The next step is, their refusal to appoint a commission to take testimony deemed important by the accused. This aspect of the court, as it appears by inference, is sustained by the face of the sentence. It reminded me of the case of Chief Justice Gibson going out of the old-fashioned way of giving a judicial sentence. That trial looked to me very much like another that I have read of, that took place about A. D. 32, before an ecclesiastical tribunal. The accused was innocent; and on proceeding to try him, they found it exceedingly difficult to convict him, and so a question was put to him, and the judge adjured him to reply, and then declared his answer to be blasphemy: and all exclaimed with one voice, "He is worthy of death." The case was arrested, and they spit in his face, and proceeded to condemn him. When the subject came before the presbytery, it looked like another part of this trial: when he was sent to another tribunal, it was determined that there was no jurisdiction in the case. And when it came to the sentence of the court, the judge washed his hands, and delivered him to his accusers, to do as they pleased with him. I do not mean that the courts below had such feelings; but there is an analogy between the two cases, which kept resting upon my mind, as the records of the trial were read.

Rev. *George Beecher.* There are aspects of this case, which are very new and very exciting. I can see very easily how an individual of excitable temperament, under such circumstances, should have been led to speak unadvisedly with his lips, and yet had no design to trample upon the authority of the court. The simple statement of what the session did, caused my blood to boil over. I know if I had been before that session, I should have been as turbulent as that brother was.

Mr. Beecher proceeded to show the superior power of love over authority, in correcting evils in the church, and argued that the principles of discipline laid down in the gospel, are based on *love*, as the genius of the gospel; and that, where this principle is applied, and does not melt a man down, it is proof that he ought not be in the church; but when authority is administered without love, the tendency is to excite wrath. But this is not the genius of the gospel. The tendency of Presbyterianism, where love is absent, is despotic. It is a glorious system where love is present; but without it it is terrible. We have been thrown off by the repellant influence of Presbyterianism without love, which is like a dead carcass taken and united with the spirit of the evil one. The whole aspect of this case shows that it was an effort to coerce, instead of attempting by love to win. Passing over the things that have been thrown out—for there is a consecutive train of events up to the time of that trial, that must influence every one—when the brother came before the session there was that on his mind that made him feel that he was not treated in a Christian manner. We want to see how the things that came out would act on a person of excitable temperament. He felt that these brethren wished to make out a case against him. This placed him in an attitude where he might appear to be litigious, because he put himself on his defence. A man under such circumstances would feel that his reputation was at stake, and it would be natural for him to desire to have some one on the ground to take the matter down in black and white. He brought in a reporter, and in pursuance of a stern legislative act, the stenographer was excluded. Here was no love, but legislation. That looks very much as if his first impression respecting the design of the court was correct. Under these circumstances, he says, "If I can't have my rights I'll have no more to do with the trial." The court, if actuated by love, ought to have granted this. Brethren who have never been put in such circumstances can never appreciate the feelings of an individual so situated. I can realize how valuable a reporter may be at such a time. When my father was arraigned for heresy, he knew that he had prejudiced judges—we had evidence enough that they were prejudiced from the statements that had been made. I was witness to the anxiety, and depression, and sleepless nights which he suffered. And when the trial came on, and the reporter Mr. Stansbury came into the court, my father went up to him and threw his arms around his neck, and said, "Brother, I bless the Lord that you have come." And I know the joy which this occasioned the family; and I know it was the means of saving his reputation. Under these circumstances, if the court had ruled out the reporter, I know how it would have come home to us. I know how the brother felt. I dont wonder at what he did—the wonder is that he did not do worse. A fundamental law of the Church of Jesus Christ is, "Brethren, if a man be overtaken in a fault, restore such a one in the spirit of meekness, considering yourselves, lest ye also be tempted." Every one who will put himself in the case of that brother may form some idea of his feelings— and every one has reason to bless God that he is not placed there.—There are aspects in that case that appear to me to be exceedingly cruel. I have been placed where for five years, a course of oppressive ecclesiastical measures have been pursued. I have seen the vexatious action of a little session —two or three men getting together and lording it over God's heritage. I have known a majority, desirous of obtaining a pastor, prevented by the vexatious conduct of such a body. I had occasion to bring up the case of 18 or 19 members, who had been excluded by a summary process. I know how hopeless a case it is, for a member of the church to contend against a session, when its rights are trampled on. What is the province of the session? Is it to sustain their power, or to be ensamples to the flock? They are admonished to watch over, not to lord it over the flock.

> ———"But man,
> Vain man! drest in a little brief authority,
> Plays such fantastic tricks before high heaven,
> As make e'en angels weep."

On the other hand, when love is present, I have seen some most delightful exhibitions of Presbyterianism. There is no such thing as communcy in our books, except refusing to come before the court. The session have made out a *constructive* communcy, after the offensive act was committed, which is *ex post facto* legislation. Legislative

power, *ex post facto*, is the worst of all arbitrary power. Another peculiar feature of our system is, that the same persons are the judges of the fact and the law; and here they were also the prosecutor. The power claimed by the session was, that they had a right to construe a thing as contumacy, which is not laid down in the books, and which the brother dtd not consider as such, and which many others did not consider as such. Here we have legislators, judges of the law and fact, prosecutors and witnesses, all combined in the same persons — a singular combination — asking to be justified in passing such a sentence as that appealed from. I dont know what more is wanting to make a perfect system of despotism. The next thing to be noticed is, that, after they had made this decision, they dropped the whole proceedings, making that a new crime. Then the higher law would never permit you to hurry to trial, without an effort to restore the erring brother. A new issue is here formed, upon the analogy of the civil law. It has grieved me to hear such frequent appeals to the civil law. Christ's kingdom is a kingdom of love, and not of absolute law. You can never find any case where he permits a man, for any crime, to be summarily prosecuted, convicted, and sentenced, at the same time. And the book of discipline, in case an individual refuses to appear, and so is justly chargeable with contumacy, declares that the court shall not be freed from the responsibility of giving him a fair trial. They are to constitute the court, and appoint one of their number as his counsel; — the witnesses are to be examined and cross-examined, and the testimony taken down. There is no case where a man can be condemned, according to the book, without trial. They had no right to stop the trial. And what is the result? The cause comes up, and they bring in bar of his appeal, that he did not go on with the trial, when they stopped it. It is the greatest tissue of injustice I ever heard of. I would rather be under the absolute authority of the Episcopal or Methodist church, where one man has the power to cross off the name of a member; because, if you get eight or ten of the leading men against you, there is no responsibility, and you have no resource but to submit. If I had cause to fear that ever such a noose as that would get about my neck, I'd go out of the presbyterian church as quick as lightning.

Rev. *George Duffield.* In reference to the principles advanced by brother Lockwood, and the analogy referred to by him, I fully and cordially agree. In reference to the principles laid down by brother Basset, and adduced from the Bible, they are the principles upon which I have always endeavored to act. As to the reasons why I shall sustain the appeal, they are briefly these. The conduct of Mr. T., as recorded by the session, was not contumacy. In establishing any charge of contumacy, it is necessary to take notice of the circumstances which led to the actions and speeches deemed contumacious. It is possible that a court may act in such a way, as to irritate to the highest degree. Suppose a court arraigns a man, and there is something in the charges themselves showing that they were got up specifically for the purpose of cutting him off from the church, and to the accused it is known that one or more influential members of the court are personally opposed to him, and it is known to the accused that they have expressed a desire to drive him out of the church—that one of the judges had said, the accused must be put down. Suppose the accused could prove that one of the judges had said this, and his prejudiced judges are allowed to sit and judge the case, and the accused refused all opportunity to introduce witnesses to prove these things. If such circumstances should be found combined in any such case, there is enough to irritate to madness; and if there are any such circumstances in this case, we ought not to pronounce the appellant contumacious. I do not say these things are so, but common fame has said it, and the thing is possible. And if possible, it is proper for me to show certain irregularities as reported by themselves: (1.) The charge is brought without obeying the gospel rule. (2.) Though the allegations were brought on the ground of common fame, no inquiry was instituted as to the fact, whether she did charge Mr. T. with these things. All we hear is, that a committee was appointed to prepare a bill of indictment. Our book is very specific on this point. (3.) There is no proof that, in what common fame did say, she did charge Mr. T. with the sin of slander, and there is no charge to be brought unless there is sin. The accused was but exercising his right, in stating reasons against the election of a pastor. I have no hesitation in saying, that every one of the specifications, if proved, would not establish the charge of slander. (4.) Decisions were made on points raised during the trial, without giving the reasons which the book requires. (5.) When Mr. T. objected to the competency of the judges, he was not allowed to argue the case, but was put down by authority; and what Mr. T. alleged as proof against his judges was put down as contumacious. (6.) He was refused a commission to procure testimony, because his testimony was ruled to be irrelevant. Yet in the record no intimation is given of what he proposed to prove, so that there was no way for the presbytery or the Assembly to judge whether the decision was correct or not. Suppose Mr. Tappan asked a commission for the purpose of proving the truth of the things he affirmed, and it should be ruled irrelevant, and afterwards it should appear that he could prove that the things were true? (7.) As to the stenographer, enough has been said. I do not concede for one moment that the court has a right, by virtue of a general right to sit in private, to rule out a stenographer. The right to sit in private arises from something demoralizing in the subject matter of the trial. A remonstrance and a refusal of Mr. T. to consent, were recorded as evidence of contumacy. He was resisting what he deemed wrong, and he had a right to resist in that way. Any excited language, uttered under such circumstances, I cannot consent to consider contumacious. I know human nature. I have been placed in similar circumstances; and though I resisted at every step, yet no attempt was made to show that I was guilty of contumacy. I spoke of injustice. On one occasion, a member of the court rose and presented a resolution that I had not submitted to trial. I rose in my place, and stated that it was not true, for I had been there three days. Yet was I not even rebuked, and the resolution was withdrawn.

2. The second reason why I must sustain the appeal is, that the Moderator conducted the trial in violation of the established principles of justice.

(1.) In ruling out the stenographer. (2.) The accused was not allowed to argue his pleas. This trespass upon his rights was calculated to inflame to the highest degree. An accused person has a right to put in a variety of pleas. First, he may object to the libel. Second, he has a right to impeach the judges, and to introduce witnesses to prove their incapacity to sit in his case. Third, he has a right to know his accuser, and have his name endorsed on the libel. It does not appear from the record that Mr. Tappan did put in his pleas. Yet it does appear that he was making attempts to object to the competency of the court, and proposing to show that three of the judges were not competent to sit in his case; yet he was ruled down. (3.) The accused was requested to name his witnesses before proceeding to trial, and referred to the rule. Now, if you look at the book, you will perceive that this rule applies to the witnesses on the part of the prosecution. The court knows no other witnesses; and these are to be removed for the benefit of the accused, that there may be no opportunity of collusion. The burden of bringing in his witnesses rests on the accused, and he may not know what witnesses he may want, till the testimony on the part of the prosecution is concluded. He was requested to name all his witnesses — to violate his rights, in conducting his own defence. (4.) Remarks of the accused relative to the time for trial and unjust treatment, are recorded as evidence of contumacy, showing that the court were already prejudging his case. (5.) The mode of examining the witnesses was calculated to inflame. The witnesses were brought in and examined by a member of the court, who put words into their mouths. Monosyllabic answers were all that was required. This is contrary to the practice of all courts. When a witness is introduced, he should be required to go on and tell his own story, and if he blunders, the accused is to have the benefit of it. I never heard of but one case like it; and that was the case of William L. McCalla in this city, where the charges were read to the witnesses, and sworn to by wholesale.

3. Then, again, my third reason is, the hurrying to a decision, which looks like a determination at all events to cut him off.

4. My fourth reason for sustaining the appeal is, that the principles involved, and virtually affirmed by the presbytery, are despotic and dangerous: (1.) By denying their jurisdiction, after they had tried the case; (2.) That the inferior court has the exclusive right to judge of contumacy; (3.) That the church court may inflict the highest censure for contumacy, and their sentence may not be reversed; (4.) That the session had a right to exclude the stenographer; (5.) That the remonstrances of the accused against the decision of the court may be construed into contempt; (6.) That the court has a right to require the submission of the accused, whether in his opinion the decision was right or wrong. They may hear his objections, and go on with the trial; but to require his consent before they proceed, they have no right; (7.) That no appeal or complaint will lie, in case of contumacy.

5. My last reason is, that the presbytery mistated a material fact, and this has prejudiced the accused, and done him injury. They have said that Mr. Tappan arrested the trial, which is not the fact. They have pronounced the accused contumacious, without hearing his rebutting evidence.

Decision of the General Assembly.

After a protracted evening session, May 27th, and a large part of the members had given their opinions, Rev. George Beecher moved that the appeal be sustained. It was thought best, however, not to take the question by ayes and noes. Rev. Dr. Cox then introduced a minute, which was read and adopted with great unanimity, only a few voices being in the negative.

Resolved, That in view of the whole case, the Assembly, while they sustain the appeal, and cannot pass without censure some of the acts of the courts below, are constrained to rule as follows, namely,

1. That the act of the Session excluding the Stenographer, even if it were within the ultimate prerogatives of the court, was of very questionable wisdom, as well as of dangerous precedent, in reference to the rights of respondents at their bar.

2. That there seems to have been, in the proceedings of the Session, too much precipitation and absoluteness, and too little of that calm and practical vindication of their own dignity, which mildness and forbearance, in the spirit of our Master, are largely necessary to inspire, and this especially in reference to the sentence they pronounce.

3. That the appellant seems in several respects to have manifested a resolute opposition to the court of the first resort, which certainly as a whole amounts to contumacy; though the Assembly are not disposed to graduate it as flagrant or unmingled, or in circumstances of no severe probation.

4. The Assembly therefore decide in the premises, that the sentence of the Session, suspending the appellant, be, and it hereby is, reversed, as also the decision of the Presbytery confirming that of the Session.

5. That the appellant be advised to review his conduct, in the spirit of solemn and faithful self-examination, and henceforth to order his way with more meekness and reverence of the authority of the Great Head of the Church, as the supreme President of all our judicatories.

6. That all the parties, the Session and the appellant in the first instance, and after that, if necessary, the Presbytery with them, be required solemnly and prayerfully to confer together in the whole case, with the sincere purpose of preventing further proceedings and pacificating all concerned, according to the order and honor of the Kingdom of Christ; and that they resume not their formal proceedings of trial before the Session, unless or until it is demonstrated that no other measures can preventively avail; and the Assembly do solemnly and affectionately exhort all persons at all connected with the case, and especially the parties themselves, to *seek for peace and things whereby one may edify another.*